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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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नई दिल्ली, बृहस्पतिवार, 12 अगस्त 2010/श्रावण 21, 1932

No. 1675]

NEW DELHI, THURSDAY, AUGUST 12, 2010/SHRAVANA 21, 1932

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 12 अगस्त, 2010

का.आ. 1990(अ).—जैसाकि, केन्द्रीय सरकार ने, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की दिनांक 5 फरवरी, 2010 की अधिसूचना सं. का.आ. 260(अ) के तहत स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को विधि-विरुद्ध संगम घोषित किया है;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के गृह मंत्रालय की दिनांक 5 मार्च, 2010 की अधिसूचना सं. का.आ. 544(अ) के तहत विधि विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के माननीय न्यायाधीश न्यायविद् श्री संजीव छना थे;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या उक्त संगम को विधि विरुद्ध घोषित किए जाने का पर्याप्त कारण था या नहीं, दिनांक 5 मार्च, 2010 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिनांक 5 फरवरी, 2010 की अधिसूचना सं. का.आ. 260(अ) में की गई घोषण की पुष्टि करते हुए दिनांक 4 अगस्त, 2010 को एक आदेश पारित किया था।

अतः, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 4 की उप-धारा (4) के अनुसरण में उक्त अधिकरण के निम्नलिखित आदेश को प्रकाशित करती है, अर्थात्:—

(आदेश अंग्रेजी में छपा है।)

[फा.सं. 14017/13/2010-एन.आई-III]

अरुण कुमार यादव, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 12th August, 2010

S.O. 1990(E).—Whereas the Central Government in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), declared the Students Islamic Movement of India (SIMI) to be unlawful association vide notification of the Government of India in the Ministry of Home Affairs number S.O. 260(E), dated the 5th February, 2010:

And whereas, the Central Government in exercise of the powers conferred by sub-section (1) of Section 5 of the said Act constituted vide notification of the Government of India in the Ministry of Home Affairs number S.O. 544(E), dated the 5th March, 2010, the Unlawful Activities (Prevention) Tribunal consisting of Mr. Justice Sanjiv Khanna, Judge of the High Court of Delhi;

And whereas, the Central Government in exercise of the powers conferred by sub-section (1) of Section 4 of the said Act referred the said notification to the said Tribunal on the 5th March, 2010 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as unlawful;

And whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of Section 4 of the said Act, made an order on the 4th August, 2010 confirming the declaration made in the notification number S.O. 260 (E), dated the 5th February, 2010.

Now therefore, in pursuance of sub-section (4) of Section 4 of the said Act, the Central Government hereby publishes the following order of the said Tribunal, namely :—

[F. No. 14017/13/2010-NI-III]

ARUN KUMAR YADAV, Jt. Secy.

UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL, NEW DELHI

Date of Decision : 4th August, 2010.

In Re : Banning of Students Islamic Movements of India under the Unlawful Activities (Prevention) Act, 1967.
UNION OF INDIA Petitioner

Through Mr. A.S. Chandhiok, Additional Solicitor General with Mr. Sachin Dutta, Standing Counsel, Mr. Sanjay Katyal, Dr. Shailendra Sharma, Mr. Aashish Gupta, advocates.

Versus

**STUDENTS ISLAMIC MOVEMENT
 OF INDIA** Respondent

Through Mr. Ashok Agarwaal, Mr. Salar M. Khan, Mr. Mobin Akhtar, Ms. Sreedevi Panikker, advocates with Mr. Humam Ahmed Siddiqui in person.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA

SANJIV KHANNA, J.

1. This Order answers reference under Section 3(3) read with Section 4(3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the Act, for short) made to this Tribunal constituted vide Notification no. S.O.544(E) dated 5th March, 2010 under Section 5(1) of the Act made by Government of India, Ministry of Home Affairs, for adjudicating whether or not there is sufficient cause for declaring the Students Islamic Movement of India (SIMI for short) an “unlawful association”.

2. Earlier the Central Government had published Notification no. S.O. 260(E) dated 5th February, 2010 in exercise of powers conferred under Section 3(1) of the Act and declared that SIMI had been indulging in activities which were prejudicial to the security of the country and had the potential of disturbing peace and communal harmony and disturbing secular fabric of the country.

3. Notification dated 5th February, 2010 refers to grounds (a) to (m) why the Central Government believes that SIMI is indulging in the aforesaid activities. The relevant extract of the notification is quoted below:

“And whereas, the Central Government is of the opinion that without prejudice to its contentions before the Hon'ble Supreme Court, in abundant caution, it is necessary to exercise its powers under section 3 of the Act;

And whereas the Central Government is of the opinion based, inter alia, on the following grounds that SIMI is believed to be indulging in the activities which are prejudicial to the integrity and security of the country:

- (a) In case bearing Crime No. 120/08, March 27, 2008, in PS Pithampur, Dhar, Madhya Pradesh, 13 absconding hardcore SIMI activists including Safdar Hussain Nagori were arrested alongwith firearms and objectionable literature, training books of SIMI with the aim to cause explosions in different places;
- (b) On May 13, 2008 there were a series of blasts in Jaipur, in which 68 persons were killed and 150 were injured and a case has been registered by Police;
- (c) On July 26, 2008, Ahmedabad city was rocked by a series of 23 blasts at 18 different places, including two car bomb blasts at two hospital sites resulting in the death of 57 persons and injuries to over 160 persons. Ahmedabad city police arrested 18 SIMI activists for these blasts. Eighteen cases have been registered by Police against these activists;
- (d) On September 13, 2008, there were several blasts in different localities in Delhi in which 24 persons were killed and 146 were injured. The Delhi Police arrested 12 accused for these blasts out of those three accused belong to SIMI. Delhi Police have registered 5 cases against 12 accused including these three;
- (e) On 25th July, 2008, eight serial bomb blasts occurred at different places in Bangalore city. One woman died at the spot and 11 persons were injured. The Karnataka police have registered 9 cases and have arrested 10 accused persons of which 3 were active members of SIMI.
- (f) SIT, Hyderabad registered a case against seven accused activists of SIMI for conspiracy to wage war against the country. They had plans to organize a training camp in Anantagiri Hills Forest Range in RR Distt.
- (g) Between February 2008 and August 2008, SIMI activists were arrested in Sehore, Bhopal, Rajgarh and Indore districts for carrying on illegal organizational activities.
- (h) Between February 2008 and September 2008, SIMI activists were arrested in Gopalpuram and Saidabad in Hyderabad for carrying on illegal organizational activities.
- (i) Five SIMI activists were arrested on 20-10-2009 by ATS Bhopal from Indore for unlawful activities. A Case Cr. No. 5/2009 has been registered by ATS, Bhopal u/s 3, 10, 13 of UAP Act, 1969, and 153(A) 153(B) IPC.
- (j) Based on the revelations of the activists arrested from Indore on October 20, 2009, four more SIMI activists, were arrested from Jabalpur on 4-11-2009 by ATS, Bhopal. A case Cr. No. 6/2009 has been registered u/s 3, 10, 13 of UAP Act, 1969, and 153(A) 153 (B) 120(B) of IPC.
- (k) A criminal case was registered against SIMI activists for their involvement in terrorist activities vide Cr. No. 14/2008 under sections 120(B), 121, 121(A), 122, 124(A), 153(A) (1)(B), 153(B)(1)(A) of IPC, under Section 10, 11 and 13 of Unlawful Activities (Prevention) Act, 1967, and Section 3, 4 and 5 of Explosives Substances Act of Gokul Road Police Station, Hubli City. A total 18 SIMI activists have been made accused in the case.
- (l) On 24th April, 2009 one accused person of SIMI has been convicted for 5 years RI and fine of Rs. 1,000 by Tis Hazari Court who was arrested with explosive material by Special Cell of Delhi Police on 25th January, 2007.
- (m) An appeal filed in Delhi High Court against the conviction of 4 accused of SIMI on 9th July, 2007 by Lower Court for 10 years RI and fine of Rs. 50,000 each in I/d 6 months u/s 121/121A/122 IPC, RI, 7 years under section 4 of ES Act, fine 25,000 I/d 3 months RI, 5 years u/s 5 ES Act, 5 fine 25,000, was disposed of on 28th July, 2008.

And whereas the Central Government, based on the aforesaid grounds, is of the opinion that SIMI is believed to be indulging in the activities which are prejudicial to the integrity and security of the country.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an "unlawful association";

And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to-

- (i) continue its subversive activities and re-organize its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;
- (iii) propagate anti-national sentiments; and
- (iv) escalate secessionism by supporting militancy;
- (v) undertake activities which are prejudicial to the integrity and security of the country;

And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section(3) of Section 3, the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect from the date of its publication in the Official Gazette.”

Background Note

4. Along with the reference, the Central Government has enclosed and filed before this Tribunal a background note.

5. The background note states that SIMI came into existence on 25th April, 1977 in Aligarh Muslim University, Aligarh, Uttar Pradesh, as a front organization of youth and students having faith in Jamait-e-Islami Hind. It became “independent” of Jamait-e-Islami Hind in 1993 and is said to be affiliated to “World Association of Muslim Youth”. As per the background note, the objective of SIMI includes Jehad (religious war) for the cause of Islam and destruction of nationalism and establishment of Islamic Rule or Caliphate. It is stated in the background note that the organization does not believe in nation state or the Constitution of India and propagates formation of Sharia based on Islamic rule by and under Islamic inqab. SIMI is active in Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal and the National Capital Territory of Delhi (Delhi for short). Its presence is also noticed in the States of Assam, Bihar, Jharkhand and Uttarakhand. Financial position of the association is sound and their primary sources are donation, membership fee and financial assistance provided by supporters even from the gulf countries. It is alleged that SIMI has been influenced by hard core Muslim terrorist organizations like the Hizbul Mujahideen and the Lashkar-e-Toiba, from Pakistan who have penetrated into SIMI cadres to achieve their goals. The activities and statements of SIMI are prejudicial to maintenance of communal harmony, hurt religious sentiments of other communities, incite religious fervor and violence and question the territorial integrity of the country. SIMI has supported militancy in Kashmir and Punjab and is involved in militant terrorist activities in the country.

6. The background note refers to activities of SIMI during the period after February 2008 and before publication of the Notification dated 5th February, 2010. In para 25 of the background note it is stated that despite imposition of ban, SIMI has been carrying out its activities including terrorist and organizational activities, floating new cover organization, undertaking clandestine trainings, raising funds, publishing/distributing provocative literature and CDs of communal and divisive propaganda. Paras 26 and 27 of the background note read:-

“26. Terrorist activities

(a) Jaipur serial blasts

On May 13, 2008, there were a series of blasts in Jaipur, in which 68 persons were killed and 150 were injured. The thirteen activists of SIMI were arrested. A case had been registered by Police which is pending trial.

(b) Ahmedabad serial blasts

On July 26, 2008, Ahmedabad city was rocked by a series of 23 blasts at 18 different places, including two car bomb blasts at two hospital sites, resulting in the death of 57 persons and injuries to over 160 persons. Between July 27, 2008 and September 3, 2008, 29 unexploded IEDs were recovered from various parts of Surat City. During investigation of the above mentioned serial blasts in Ahmedabad city, the police arrested 18 SIMI activists.

(c) Delhi serial blasts

On September 13, 2008, there were several blasts in different localities in Delhi, in which 24 persons were killed and 146 were injured. The Delhi Police arrested three SIMI activists in connection with these serial blasts, Delhi Police have registered 5 cases against 12 accused including these three. These cases are under trial.

27. State-wise objectionable organizational Activities

Since ban on 7th February, 2008, SIMI cadres continued their involvement in objectionable organizational activities in various States. A brief of these activities follows:

- (a) At Gangapur City (Rajasthan) important functionaries of the Safdar Nagori faction of SIMI, held meetings on March 29, 2008, April 11, 2008 and December 26, 2008 to discuss the impact of arrest of Safdar Nagori and 12 others on March 27, 2008 at Indore, Madhya Pradesh. The agenda included arranging finances for legal expenses for arrested SIMI activists, and also drawing future strategy.

- (b) At Belgaum, Karnataka a meeting was held sometime in April 2008, wherein, a SIMI activist and his associates discussed the possibility of assassination of certain important Hindu leaders.
- (c) In Districts of Bahraich, Moradabad, Badaun, Lucknow, Varanasi, Azamgarh and Bhadohi of Uttar Pradesh, SIMI activists carried on various objectionable organizational activities, including meetings, provocative speeches and instigation, against the State during February 2008 to July 2009.
- (d) In Maharashtra, SIMI activists continued to indulge in adverse organizational activities including fund collection, campaign in favour of SIMI, indoctrination programmes and support mobilization, during April 2008 to July 2009.
- (e) In Kerala, during February 2008 to May 2009 SIMI activists, organized meetings, slogan raising, camps etc. through cover organizations.
- (f) Since February 2008, SIMI cadre held meetings at Ahmedabad, Vadodara, Surat and Modasa on various dates to reorganize themselves.
- (g) During February 2008 to August 2008, SIMI activists were arrested in Sehore, Bhopal, Rajgarh and Indore districts for carrying on illegal organizational activities.
- (h) During February 2008 to September 2008, SIMI activists were arrested at Gopalpuram and Saidabad in Hyderabad for carrying on illegal organizational activities.”

7. In para 28, it is stated that SIMI is carrying on its activities under the garb of cover organizations in several States. Many members of SIMI have regrouped under various cover organizations which have been mentioned therein.

8. In para 29 of the background note, it is stated that 13 SIMI leaders including hardliners were arrested in Indore on the intervening night of 26-27th March, 2008. Interrogation of these leaders has revealed that SIMI caters and continues to engage in activities and prepare themselves for future operations. Three training camps were organized in Hubli (Karnataka), Choral (Indore) and Wagman (distt. Kottayam, Kerala) in the months of April, November and December 2007 respectively. In these camps, training was imparted in air gun, pistol firing, rock climbing, trekking, rope climbing and swimming, etc. Seizure from the arrested accused included seven pistols, seven live cartridges, computer hardware, masks, surgical hand gloves, CDs and diaries containing telephone numbers of SIMI activists all over India including SIMI literature and SIMI table of fund collection, etc. On 20th October, 2009, five SIMI activists were arrested by Gujarat police. It is alleged that they had a role to play in the Ahmedabad bomb blast on 26th July, 2008. Thereafter, four more SIMI activists were arrested in Jabalpur. As per the Central Government, these arrests indicate that SIMI organization is making all out effort to regroup and carry out its activities clandestinely. Background note in para 30 states that SIMI activists and their sympathizers undertook fund raising activities in Thane, Pune to help the accused of Mulund blasts in March 2003, Mumbai blasts in 2002 and 2006. In para 31, it is stated that SIMI activists have continued to circulate and distribute subversive and provocative material during the period post February 2008. The objectionable material including CDs, cassettes, leaflets, books and magazines were circulated in Karnataka, Maharashtra, Madhya Pradesh, Gujarat, Delhi and West Bengal. The material contained inflammatory jehadi speeches, revenge for Babri Masjid demolition, the so-called conspiracy of Zionist forces, Jihad and Khilafat. The details of these activities are listed in para 31 of the background note and read :—

- (i) A SIMI activist issued a hard disc to its cadres at Belgaum during April-May, 2008 on plight of Muslims, alleged atrocities on Muslims, inflammatory Jehadi speeches and methods to make various kinds of bomb.
- (ii) Shaan-e-Karim printed 10,000 copies of controversial Babri Masjid posters at Belgaum and it was circulated in Bijapur city during December 2008.
- (iii) Controversial posters in hard disc showing their struggle for complete supremacy of Allah includes Babri Masjid posters also.
- (iv) CDs, diaries containing telephone numbers of SIMI activists all over the country, huge SIMI literatures containing schedule of training programmes, fund collection, etc. were seized from Juni, Indore on March 26/27, 2008. The scrutiny of Digital Data storage devices seized from the SIMI cadres revealed that these had been meticulously gathered over a period of time from the internet and other sources. It included motivational songs in Urdu, probably recorded in Pakistan meant for spreading communal hatred, exhorting Muslims to revolt and avenge the demolition of Babri Masjid in Ayodhya and divide India by wiping out Hindus from Kashmir.
- (v) In August 2008, Thereek-e-Millat books, one country made weapon, etc. were recovered from the residence of a SIMI activist. The book is inflammatory in nature, and focuses on Khilafat and Jihad.
- (vi) In September 2008, books/magazines were recovered from a well of Siddi Sayed Jali, Lal Darwaja, Ahmedabad. The book is inflammatory in nature, and focuses on Khilafat and Jihad.

9. In para 32 of the background note it is stated that since 7th February, 2008 over two hundred activists of SIMI have been arrested by the State police in Karnataka, Maharashtra, Kerala, Madhya Pradesh and Andhra Pradesh.

10. The Central Government along with the background note has given State wise detail of cases registered against SIMI or its members before 7th February, 2008 as Annexure VIII. Annexure IX gives details of State-wise cases registered against SIMI activists after 7th February, 2008. The details of these cases are as Annexure 1.¹

Reply/Written Statement

11. In reply/written statement filed by Mr. Humam Siddiqui and Mr. Misbahul Islam they have raised following preliminary objections:—

- (a) SIMI was lawful and never a criminal organization. However, after the Central Government banned SIMI in September, 2001, it ceased to exist.
- (b) SIMI cannot be held liable for the actions of its members or erstwhile members, or sympathizers or erstwhile sympathizers. SIMI does not exercise any supervision or control over its members and their activities, except to the extent to which they relate to SIMI. SIMI cannot be held liable for acts of any person committed in his or her capacity as an individual.
- (c) The grounds mentioned in the notification or contents of the background note do not fulfil the requirements of law.
- (d) Statements made to police officers under Section 161 Cr. P.C. are not admissible before the Tribunal except to the extent permitted under Section 162 or Sections 27 and 145 of the Evidence Act.

12. Some other preliminary objections have also been raised.

13. The written statement/reply refers to the brief history of SIMI after it was established on 25th April, 1977 in Aligarh. It is stated that SIMI is a social, cultural, religious organization for welfare of all persons regardless of religion, caste, economic background or region. It is a *Deeni* (religious) denominational organization and its activities are non-political and non-communal. Reference is made to Articles 3, 4 and 5 of constitution of SIMI. It is stated that at the time of the first ban, there were about 400 *Ansar* (basic members) and about 20,000 *Ikhwan* (ordinary members). It is submitted that only persons of integrity, good character and with a spirit of sacrifice and service to humanity were enrolled as *Ansars*. The age limit for becoming a member for either *ansar* or *Ikhwan* was 30 years and a person automatically ceases to be a member on attaining the said age. It is, therefore stated that SIMI is purely a youth organization. It is stated that contributions to SIMI were through individual contributions, zakat and from the sale of animal hide. It is stated that SIMI was not easily influenced by hard-core Muslim terrorist organizations operating within the country or outside. It is denied that SIMI was against Indian nationalism and wanted to replace it with international Islamic order. Khilafat is part and parcel of Islamic theology and is merely a concept by which life is governed by the true teachings of Quran and sunna irrespective of race and colour. It is denied that SIMI extended support to extremists and terrorists in Punjab and Jammu and Kashmir. Involvement of SIMI activists in any crime or incident has been denied.

14. Para-wise reply is also given to the background note. In the para-wise reply, virtually each and every allegation has been denied, though denial of several allegations is on account of lack of knowledge. It is denied that any monthly magazine was published by SIMI workers (para 67 of the reply). Allegation of bias against the Central Government viz. Muslim community has also been made. It is denied for want of knowledge that SIMI activists have or continue to circulate/distribute any subversive, provocative and objectionable CDs, cassettes, leaflets and books. Similarly, it is denied for want of knowledge that 10,000 copies of posters relating to Babri Masjid were seized. It is reiterated that SIMI has ceased its activities in various States in September, 2001. Reference to criminal cases both prior to and after 2008 are denied for want of knowledge. With regard to Safdar Hussain Nagori, it is denied, for want of knowledge, that he was arrested with fire arms and objectionable literature and training books of SIMI with the aim to cause explosion at different places. Circulation and distribution of subversive and provocative materials since February, 2008 in form of CDs, Cassettes, books, magazines etc. in different parts of India has been denied. Printing of posters and allegations of using the hard disc by SIMI activists has been denied for want of knowledge.

Earlier Orders

15. By an earlier Notification dated 27th September, 2001 SIMI was declared an “Unlawful Association” under Section 3(1) of the Act. Tribunal headed by S.K. Aggarwal, J. vide his Order dated 26th March, 2002 published in the Gazette of India vide Notification dated S.O. 397 (E) dated 8th April, 2002 answered the reference and held that there was sufficient cause to ban SIMI.

16. After a period of two years, the Government of India issued another Notification no. S.O. 1113(E) dated 26th September, 2003 re-imposing the ban on SIMI under Section 3(1) of the Act. Tribunal presided over by R.C. Chopra, J. by his Order dated 23rd March, 2004 published in the Gazette Notification No. S.O. 499(E) dated 16th April, 2004 held that there was sufficient cause to continue the ban for a further period of two years.

1. List of cases after 7th February, 2008.

17. SIMI was banned for the third time when Government of India issued Notification No. S.O. 191(E) dated 8th February, 2006. Tribunal constituted by B.N. Chaturvedi, J. by his order dated 7th August, 2006 published in the Gazette of India being Notification No. S.O.1302(E) dated 11th August, 2006 held that there was sufficient cause for the ban.

18. By Notification No. S.O. 276(E) dated 7th February, 2008 published in the Gazette of India, Government of India imposed a fresh or the fourth ban on SIMI in February, 2008. Gita Mittal, J. by her Order dated 5th August, 2008 held that SIMI as an organization continues to exist and is carrying on its activities. However, she held that the Notification issued by the Central Government was deficient as it failed to set out the "grounds" why SIMI should be banned. It was observed that the background note cannot be taken into consideration. Accordingly the reference was answered in negative and against the Central Government.

19. Union of India has filed a Special Leave to Appeal No.D-22346/08 and 1984/08 against the said decision by Gita Mittal, J. and vide Order dated 6th August, 2008, notice was issued and it was directed that there shall be an interim stay of the impugned Order for three weeks. Interim order was continued and extended till further orders. The case was listed before a larger Bench of three Judges along with connected-matters.

Unlawful activity and unlawful Association

20. Section 2 (o) and (p) of the Unlawful Activities (Prevention) Act, 1967 read as follows:—

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims; questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

(p) "unlawful association" means any association,—

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity :

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir;"

21. Section 2(o) of the Act defines 'unlawful activity'. It means "any action taken" by an association or an individual of the kind mentioned in clauses (i), (ii) and (iii) of the said sub-section. Any action taken has reference to and must be of the kind stipulated in and covered by clauses (i), (ii) or (iii). Action can be either written or spoken, by sign or by visible representation or even otherwise. Clause (i) refers to "action taken" with the intent or which supports any claim for secession or cession of any part of India or incites any individual or group of individuals to bring about secession or cession. Support or inciting is covered by clause (i). Clause (ii) refers to "action taken" which has the effect of disclaiming, questioning, disrupting or intending to disrupt the sovereignty and territorial integrity of India. Clause (iii) refers to "action taken" which causes or is intended to cause disaffection against India.

22. Unlawful association has been defined in Section 2(p) of the Act and consists of two parts; (i) and (ii). Part (i) refers to unlawful activity defined in Section 2(o) and encompasses associations which have the object that encourage or even aide persons to undertake the said activity. The last part of Part (i) widens the definition of the term "unlawful association" to include an association of which members undertake unlawful activity. In a way, therefore, the association is vicariously liable and can be regarded as an unlawful association if members of an association undertake unlawful activity. This aspect has been examined later on. (See, paragraphs 83 to 85 of the Report.)

23. Section 2(p)(ii) does not refer to unlawful activities defined in Section 2(o) of the Act, but refers to Sections 153A and 153B² of the Indian Penal Code, 1860(IPC for short). An association which encourages or aides or the object of

²Sections 153A and 153B IPC read:—

153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity,² or

which is to encourage or aide persons to undertake activities punishable under Section 153A or 153B is an unlawful association. "Object" for which an association is formed can in many cases be in writing but encouragement and aide to persons to undertake activities under Sections 153A and 153B may be oral or in writing. The last part of Section 2(p)(ii) widens and expands the scope of the term "unlawful association", when it stipulates that an association of which members undertake activities which are punishable under Section 153A or 153B of the IPC is an unlawful association. An association, therefore, can become an unlawful association if its members undertake any activity covered by Section 153A or 153B of the IPC. The last aspect has been examined again later on. (See, paragraphs 83 to 85 of the Report).

Nature and Scope of enquiry before the tribunal, material and evidence that can be relied upon and the Judgment of the Supreme Court in *Jamaat-E-Islami Hind Vs. Union of India*, (1995) 1 SCC 428.

24. In *Jamaat-E-Islami Hind* (supra), the Supreme Court examined the provisions of the Act with reference to jurisdiction and nature of the tribunal constituted under Section 5 to decide a reference made under Section 4 once a declaration by way of notification is issued by the Government under Section 3 of the Act. Reference was made to Section 4, which for the sake of convenience is reproduced below:-

"4. Reference to Tribunal. (1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity, for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

153-B. Imputations, assertions prejudicial to national integration.—(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, consents, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette."

25. The Supreme Court emphasized that Section 4(1) uses the expression "adjudicating whether or not there is sufficient cause for declaring the association unlawful". Reference was made to Section 4(2) which requires issue of notice in writing to show cause to the association and sub-section (3) mandates inquiry in the manner specified in Section 9 and after calling for such information as may be necessary from Central Government or from office bearers or members of the association. The Tribunal under Section 4(3) is required to adjudicate and make an order, as it may deem fit, either confirming the declaration made in the notification or cancelling the same. After interpreting the said provisions of the Act it was held by the Supreme Court in *Jamaat-E-Islami Hind* (supra):-

"11. The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment. The decision to be made by the Tribunal is "whether or not there is sufficient cause for declaring the Association unlawful". Such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context."

(emphasis supplied)

26. The aforesaid ratio was affirmed after making reference to Section 5, which stipulates that the Tribunal shall be headed by a Judge of the High Court and proceedings will be deemed to be judicial proceedings and the Tribunal shall be deemed to be a civil court for the purposes specified. It was accordingly held that the opinion given by the Tribunal under Section 5 has binding effect and has been given a characteristic of judicial determination as distinguished from an opinion of an Advisory Board under the preventive detention laws. The opinion of the Tribunal should be objective opinion whether or not there is sufficient cause for declaring an association unlawful. As mentioned above, Section 4 requires issue of notice by giving opportunity to show cause to the association. Accordingly, the Supreme Court held that the objective findings by the Tribunal must be based upon materials required to support the judicial determination. While deciding the reference, the Tribunal does not act or exercise powers of judicial review under Article 226 of the Constitution of India on whether or not declaration under Section 3(1) should have been made but goes into the factual existence of the grounds by objective determination of the lis between the Government and the association

27. Referring to the nature of evidence and the procedure which a Tribunal should adopt it was held that the minimum requirements of natural justice must be satisfied to ensure that there is meaningful adjudication. However, the requirements of natural justice have to be tailored to safeguard public interest which must outweigh every lesser interest. In this connection, reference was made to Section 3(2) of the Act and Rule 3(2) and proviso to Rule 5 of Rules for withholding and non-disclosure of facts which the Central Government considers against public interest and disclosure and non-disclosure of confidential documents and information which the Government considers against public interest to disclose. At the same time, the Supreme Court observed that the Tribunal should protect the rights of the association and members without jeopardizing the public interest and the adjudication process should not be denuded of its contents and objectivity. The Tribunal is not required to be a mere stamp or give an imprimatur on the opinion already formed by the Central Government. The judicial scrutiny implies a fair procedure to prevent vitiating element of arbitrariness.

28. On the question of confidential information that is withheld, the Supreme Court emphasized that the Tribunal can look into the same for the purpose of assessing credibility of the information and the Tribunal should satisfy itself whether it can safely rely upon it. This was necessary as in certain situations, source of information or disclosure of full particulars may be against public interest. Such a modified procedure while ensuring confidentiality of information and its source in public interest, enables the Tribunal to test the credibility of confidential information for objectively deciding the reference.

29. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, material or information for various reasons may require confidentiality. Disclosure can jeopardize criminal cases pending investigation and trial.

30. On the question of nature and type of evidence, which can be relied upon by the Tribunal, the Supreme Court referred to Rule 3. Rule 3(1) stipulates that the Tribunal subject to sub-rule (2) shall follow, as far as practicable, the rules of evidence laid down in Indian Evidence Act. Thus, the rules of evidence as far as possible as laid down in the Evidence Act should be followed. In this regard, reference can be made to the following observations in *Jamaat-E-Islami Hind* (supra):-

“22.The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the *ipse dixit* of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.

23. In *John J. Morrissey and G. Donald Booher v. Lou B. Brewer*³ the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)

“Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (*unless the hearing officer specifically finds good cause for not allowing confrontation*); (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.”

24. XXXXX

25. XXXXX

26.The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.” (emphasis supplied)

31. My attention was drawn to the following passage from *Paul Ivan Birzon versus Edward S. King*, 469 F 2d 1241 (1972) which was referred to in *Jamaat-E-Islami Hind*:

“... the board was required to decide whether it would believe the informants or the parolee and his witnesses. The infirmity that we see in the hearing and determination by the parole board is that it resolved the credibility issue solely on the basis of the State report, without itself taking the statements from the informants. Thus the board had no way of knowing how reliable the informants were and had no real basis on which to resolve the credibility issue against the parolee....

We do not mean to intimate that the board should have taken testimony from the informants at the hearing and given the parolee the opportunity to cross-examine. What we

do mean is that the board should have received the information directly from the informants (although not necessarily in the presence of the paroled), instead of relying solely on the State report. The board could then have reached its own conclusions about the relative reliability of the informants' statements and those of the paroled and his witnesses.

Similarly, the board could then have made its own decision about how realistic were the claims of potential danger to the informants or to State parole officers if their identity was disclosed, instead of placing exclusive reliance on the State report. Thus, we hold that, in relying exclusively on the written synopsis in the State report, which was the only evidence of a parole violation, in the face of the paroled's denial and his presentation of the testimony of other witnesses, the revocation of Satz's parole was fundamentally unfair to him and was a denial of due process of law."

32. However, before quoting the said portion, the Supreme Court had made its own observation and has stated the reasons why they were quoting the decision in the case of *Paul Ivan Birzon* (supra). It was stated that information can be acted upon provided the credibility issue is resolved. Credibility issue is factual and case specific.

Sections 25 and 26 of the Indian Evidence Act, 1872 and 161 and 162 of the Code of Criminal Procedure, 1973 and their relevance and bar.

33. Section 5 of the Indian Evidence Act, 1872 (Evidence Act, for short) states that evidence may be given of the existence and the non-existence of every fact in issue and of such facts as are hereinafter declared to be relevant and no others. Statement is the genesis, admission is the species and confession is the sub species. Statements are admissible if they relate to fact in issue or relevant facts. Admissions can be oral or in writing. Admission is a statement by a person which suggests an inference to any fact in issue or a relevant fact. Admissions are admissible as substantive evidence against a person who makes them or his representative in interest. Confession is an admission made by a person charged with a crime by which he admits in terms the offence, or at any rate substantially all the facts which constitute the offence. It is an express acknowledgement of guilt which by itself alone is sufficient to convict the person charged if it falls short of a plenary acknowledgement of guilt but the statement is somewhat incriminating or otherwise tends to prove the guilt, it is an admission.

34. Section 24 of the Evidence Act states that a confession made by an accused person is irrelevant in a criminal proceeding if it appears to the court that it has been caused by inducement, threat or promise from a person in authority which is sufficient as per the court to give the accused grounds for supposing that he would, by making the confession, gain advantage or avoid any evil of temporal nature. Confession should be voluntary and should not be obtained by improper means. However, as noticed above, Sec 24 refers to criminal proceedings. As examined above, proceedings before a Tribunal are not criminal proceedings. Section 24, therefore, does not apply in strict terms to proceedings before this Tribunal but admission should not be a result of fraud, force or coercion. Confessions or admission are accepted on the ground that what a man voluntary states against his interest is likely to be true. Confessions or admissions are admissible when recorded under the Customs Act, Income Tax Act etc.

35. Sections 25 and 26 of the Evidence Act, read as under:-

"25. Confession to police officer not to be proved.- No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him.- No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."

36. Section 25 states that a confession made to a police officer whether in custody or not will not be used against a person accused of any offence. The said Section bars and prohibits using the confessional statement made to a police officer by a person accused of any offence and is restricted to the offence in question in which the confession was recorded/made. It does not bar or prohibit admissibility of confession made by an accused person to a police officer with regard to any other matter which is not subject matter of the investigation in the case in which the statement was recorded. Further, the bar/prohibition is against confession and not recording of a statement of an accused by a police officer.

37. Section 26 of the Evidence Act expands the prohibition or the bar and states that a confession made to any person when the accused is in custody of a police officer shall not be used against the accused except when it is recorded in the presence of the Magistrate. Here again the restriction or bar is on the confession and not on making a statement.

38. Sections 161 and 162 of the Code of Criminal Procedure, 1908 (Cr.P.C., for short) read:-

"161. Examination of witnesses by police.- (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records;

Provided that statement made under this sub-section may also be recorded by audio-video electronic means.

162. Statements to police not to be signed-Use of statements in evidence.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”

39. Way back in 1885, a Division Bench of High Court of Bombay in *Queen Empress versus Tribhovan Manekchand and others* (1885) ILR 9 Bom. 131 had decided the question whether a confession which is otherwise inadmissible under Section 25 of the Evidence Act, would be admissible for other purposes as an admission under Section 18 against the person who has made it in his character of one setting up an interest in property, object of litigation, judicial enquiry and disposal. In a short but lucid and clear judgment, it was observed:—

“1. “Confession” in Section 25 of the Indian Evidence Act I of 1872 means, as in Section 24, a confession made by an accused person,” which it is proposed to prove against him to establish an offence. For such a purpose a confession might be inadmissible which yet for other purposes would be admissible as an admission under Section 18 against the person who made it (section 21) in his character of one setting up an interest in property, the object of litigation or judicial enquiry and disposal.

2. Where there has been a trial and an order by the trying Court under Section 517 of the Criminal Procedure Code (Act X of 1882) that concludes the immediate right to possession. Where, as in this case, an order has to be made under Section 523, the Magistrate may in the enquiry proceed on such evidence as is available, and make an order for handing property to the per-Bon he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for a conversion. It does not seem necessary, therefore, for this Court to interfere: see *Bullock v. Dunlop* L.R. 2 Ex. Div. 43 in which the accused had been acquitted, yet failed in his suit against the police officer, retaining a ring pending the Magistrate’s disposal of his application for instruction as to disposal of it under Stat. 2 & 3 Vic. Cap. 71. Reference may be made also to *Dover v. Child* L.R. 1 Ex. Div. 172.

3. These cases show that the Magistrate may make an order on such evidence as is available, which order is good as to the delivery and possession, without depriving the real owner of any action that he may have for the assertion of his right in the Civil Court. In the Code of Criminal Procedure the provisions in this respect are less explicit than in the English Statutes, but the principle recognized is the same, and leads to similar consequences.”

40. In *Mahanta Singh versus Her Ram* AIR 1954 Punjab 27, Section 25 of the Evidence Act was referred to and to the contention that the statement in which a confession is made by an accused cannot be used in any proceedings. This contention was rejected and it was observed as under:-

“This section merely forbids the use of a confession made to a police officer in a trial of the accused person for having committed an offence. This section does not forbid the use of a statement made by a thief or a robber in a case, in which the thief or robber is not being tried for having committed the theft or robbery or an allied offence. It certainly would be admissible in a civil case brought against the accused for recovery of the article or for damages for trespass and the like. Proceedings under S. 517 though they occur in the Code of Criminal Procedure, are really in the nature of proceedings analogous to civil proceedings, in which the question to be determined is to whom the possession of certain articles should be given. It has been held in – ‘Junapa Shanbhog v. Meneshwar Kachi’, 9 Bom 181 (D) that such a statement would be admissible in proceedings under S. 517, Criminal P.C., and this ruling of the Bombay High Court was followed in *Bhagat Ram v. Emperor*’, 96 Pun LR 1911 (E). The very opening words of S. 517 are:

“When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order.....”

41. Similarly the contention relying upon Section 162 of the Code of Criminal Procedure, 1898 was rejected in the following words :

“.....Similarly, S. 162, Criminal P.C., only bars the use of such a statement “at any inquiry or trial in respect of any offence under investigation at the time when such statement is made”. Section 517 does not relate to any such inquiry or trial. In fact the opening words, which are “when an inquiry or a trial in any criminal Court is concluded.....” show clearly that it is a separate proceeding from the substantial trial of the accused person for the offence. I can see no bar, therefore, either in S. 25, Evidence Act, or in S. 162, Criminal P.C., to this statement being used for the purpose of S. 517 to determine; firstly, whether the property is property regarding which an offence appears to have been committed, and, secondly, for determining the person to whose custody it should be delivered.”

42. In *Tehsildar Singh and Another versus State of Uttar Pradesh* AIR 1959 SC 1012, Section 162 of the Code of Criminal Procedure, 1898 was examined in its historical perspective by making reference to the earlier Code and it was observed that the object of the procedural legislations throughout supports exclusion of statements of witnesses made before the police during the investigation from being made use of during trial. This was justified as there was an assumption that the circumstances in which the statement was made do not inspire confidence. Reference was made to *Emperor versus Aftab Mohd. Khan* AIR 1940 All. 291 wherein it was observed as under:

“As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths.”

43. Accordingly, the Supreme Court in *Tehsildar's* (supra) has held:-

“...Indeed, in view of the aforesaid facts, there is a statutory prohibition against police officers taking the signature of the person making the statement, indicating thereby that the statement is not intended to be binding on the witness or an assurance by him that it is a correct statement. At the same time, it being the earliest record of the statement of a witness soon after the incident, any contradiction found therein would be of immense help to an accused to discredit the testimony of a witness making the statement. The section was, therefore, conceived in an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police-officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by s. 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a Court witness. Nor can it be used for

contradicting a defence or a Court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar."

44. Reference was also made by the Supreme Court to the amendment in Section 162 in 1955 which allowed the prosecution to use the statement to contradict the witness with permission of the Court.

45. This judgment of the Supreme Court was considered in *Khatri and another versus State of Bihar* 1981 (2) SCC 493. The State had objected to production of certain documents on the ground that they were 'protected' from disclosure under Sections 162 and 172 of the Cr.P.C. The Supreme Court with reference to bar under Section 162 of the Cr.P.C. held that the prohibition is applicable and prohibits use of the statement at any enquiry or trial in respect of any offence under investigation at the time when the statement was made and it does not bar or prohibit use of the statement in any proceedings in another enquiry or trial. The bar is a limited bar. It has no application for example in civil proceedings or proceedings under Articles 32 and 226 of the Constitution of India. With reference to police diaries and Section 172, the Supreme Court referred to Section 35 of the Evidence Act which reads :-

"35. Relevancy of entry in public record or an electronic record made in performance of duty:- An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact."

46. The Supreme Court has opined :-

"These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty-four under-trial prisoners were blinded and they are admittedly made by Sh. L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by section 35. The language of Section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case: The first is the decision of this Court in *Kanwar Lal Gupta v. Amar Nath Chawla*. There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under section 35 and this Court held that they were on the ground that they were "made by public servants, in discharge of their official duty and they were relevant under the first part of Section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent." This Court in fact followed an earlier decision of the Court in *P.C.P. Reddiar v. S. Perumal*. So also in *Jagdat v. Sheopal* AIR 1927 Oudh 323, Wazirhasan J. held that the result of an inquiry by a Kanungo under Section 202 of CrPC 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admissible in evidence under Section 35. We find that a similar view was taken by a Division Bench of the Nagpur High court in *Chandula v. Pushkar Rai* AIR 1952 Nagpur 271 where the learned Judges held that reports made by Revenue Officers, though not regarded as having judicial authority, where they express opinions on the private rights of the parties are relevant under Section 35 as reports made by public officers in the discharge of their official duties, in so far as they supply information of official proceedings and historical facts. The Calcutta High Court also held in *Lionell Edweris Limited v. State of West Bengal* AIR 1967 Cal 191, that official correspondence from the Forest Officers to his superior, the conservator of Forests, carried on by the Forest Officer, in the discharge of his official duty would be admissible evidence under Section 35. There is therefore no doubt in our mind that the reports made by Sh. L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under Section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. It is indeed difficult to see how in a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst police custody, the State Government can resist production of a report in regard to the truth or otherwise of the complaint, made by a highly placed officer pursuant to the direction issued by

the Mate Government. We are clearly of the view that the reports made by Shri L.V. Singh as a result of the investigation 'carried out', by him and his associates are relevant under Section 35 and they are liable to be produced by the State government and used in evidence in the present writ petition. Of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the Court after considering these reports. It may ultimately be found that these reports have not much evidentiary value and even if they contain any statements adverse to the State Government, it may be possible for the State Government to dispute their correctness or to explain them away, but it cannot be said that these reports are not relevant. These reports must therefore be produced by the State and taken on record of the present petition."

47. In *K. Aruna Kumari versus Government of Andhra Pradesh*, (1988) 1 SCC 296, at page 303 it has been held :

"8..... Besides, the detenu accepted the allegations against himself in his statement recorded under Section 161 of the Code of Criminal Procedure. It is true that it may not be a legally recorded confession which can be used as substantive evidence against the accused in the criminal case, but it cannot be completely brushed aside on that ground for the purpose of his preventive detention...."

48. Similarly in *Kuldeep Singh v. State of Punjab*, (1996) 10 SCC 659, at page 665 in paragraph 11 it has been observed:

"11. In this sense, if the appellant's confession is relevant, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. Here, the authorities say that they were satisfied about the truth of the appellant's confession. There is undoubtedly no other material. There is also the fact that the appellant has been acquitted by the Designated Court. We must say that the facts of this case did present us with a difficult choice. The fact, however, remains that the High Court has opined that there was enough material before the appropriate authority upon which it could come to a reasonable conclusion that it was not reasonably practicable to hold an enquiry as contemplated by clause (2) of Article 311....."

49. A statement of a co-accused recorded under Section 108 of the Customs Act can be used as substantive evidence (See, *Naresh J. Sukhwani versus Union of India* AIR 1996 SC 522)

50. The Full Bench of the Madras High Court in *Suman and others versus State of Tamil Nadu* AIR 1986 Madras 318, examined the question whether self-incriminating statements or confessions of the accused can be relied upon by the Advisory Board while passing an order of preventive detention. It was held in affirmative.

51. The decisions relied upon by Mr. Ashok Aggarwal, advocate under the Criminal Law Amendment Act, 1908 are distinguishable. The language of Sections 2(o) and 2(p) of the Act is different. Further decisions are in criminal cases after prosecution was filed against the members. In criminal cases the tests applied are different and the nature of proof to secure conviction is different. The question in these cases was whether a particular person had continued or acted as a member of the association after it was declared to be unlawful and had committed an offence.

Other provisions of the Evidence Act

52. Section 10 of the Evidence Act is not applicable as the proceedings before the Tribunal are not criminal proceedings.

53. Section 10 of the Evidence Act is based on the theory of agency and the statement should be made during the actual course of carrying out the conspiracy and not after the conspiracy has ended or the deponent making the confession had snapped out and ceased to be a part of the conspiracy. Confessions made by conspirators after arrest cannot be brought within the ambit of Section 10 of the Evidence Act if either the conspiracy has ended or the link has snapped [see, para 71 in *Navjot Sandhu* (supra) at page 683].

54. Section 30 of the Evidence Act stipulates that when one or more persons are tried jointly for the same offence, the confession made by one of such persons affecting him or such other persons is proved, the court may take into consideration such confession against both the persons i.e. the maker as well as the co-accused. Criminal courts are

normally reluctant to use the confessions against a co accused. It is not regarded as substantive evidence but can be pressed into service when court is inclined to accept other evidence but feels necessity of assurance in support of its conclusion detectable from other evidence. (Refer. *Haricharan Kurmi versus State of Bihar* AIR 1964 SC 1184; *Bhuboni Sahu versus King* AIR 1949 PC 257).

55. In fact Section 18 of the Evidence Act stipulates that where several persons are jointly interested in the matter, admission by one of them is receivable against the others when admission is made in a character of a person jointly interested. However, these admissions must be made during continuance of interest. Identity of interest is important and should be made by the declarant in a character of a person jointly interested in the party against whom the evidence is tendered.

56. S.K. Aggarwal, J., R.C. Chopra, J. and B.N. Chaturvedi, J. in their three separate Orders have taken a similar view and have referred to and relied upon the confession and statement of the accused recorded under Section 161/162 of the Cr.P.C. However, admissibility of evidence is one aspect and weight to be attached to a particular statement/confession is another aspect.

57. Even, Gita Mittal, J. in her order has observed that confessional statement can be considered by the Tribunal during enquiry under Section 4(3) of the Act.

Section 9 of the Act and the Rule 3(1) of the Unlawful Activities (Prevention) Rules, 1968

58. Section 9 of the Act reads :-

“Procedure to be followed in the disposal of applications under this Act.— Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code; for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.”

59. Rule 3(1) of the Unlawful Activities (Prevention) Rules, 1968 (Rules for short) reads:-

“3. Tribunal and District Judge to follow rules of evidence.—(1) In holding an inquiry under sub-section (3) of Section 4 or disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8, the tribunal or the District Judge, as the case may be, shall subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).”

60. The aforesaid Section 9 stipulates that the Tribunal shall follow the procedure laid down in the Code for investigation of the claims so far as may be. It is accepted by counsel for the Central Government and Mr. Humam Siddiqui and Mr. Misbahul Islam representing SIMI that the proceedings and procedure before the Tribunal is governed by the Code of Civil Procedure, 1908 (Code for short) and not Cr.P.C. In these circumstances, it is clear that the opinion formed by the Tribunal will be governed by principles as applicable to civil law and the principles. The principle of preponderance of probabilities applies and proof beyond reasonable doubt will not apply. In *Jamait-i-Islami Hind*, the Supreme Court has observed that test of greater probability applies. On this aspect, it may be appropriate to reproduce the following observations of A.B. Saharya, J., in his order dated 12th August, 1992 relating to JKLF as reproduced in the Gazette Notification No. S.O.203(E) dated 12th March, 1992.

“... What is to be adjudicated upon is whether or not there is sufficient cause for declaring the association unlawful. The Tribunal shall decide this question on the basis of evidence on record. Obviously, for the admission of evidence and for going into it, the Tribunal has to hold the enquiry. In holding the enquiry, Rule 3 requires that the Tribunal shall follow as far as practicable, the rules of evidence laid down in the Evidence Act. What is the nature of enquiry and how the enquiry is to be held? Section 9 postulates that the Tribunal shall follow, as far as may be, the procedure laid down in the Code of Civil Procedure “for investigation of claims”. There is clear distinction between the procedure to be followed for hearing of suits and that for investigation of claims. Far more detailed procedure is laid down for the trial of issues and hearing of suits under Order XXI Rule 58 (1) 9 as it existed at the relevant time when the Act was passed prior to 1976 Amendment of the CPC for investigation of claims under CPC. Thus, what is envisaged is an inquiry by summary procedure.”

“The nature of function of the Tribunal envisaged under Section 4 of the Act is somewhat different from judicial review of administrative action. The scope of judicial review is restricted to find out whether the opinion of the administrative authority is based upon existing,

relevant and cogent material. Sufficiency of material is beyond the scope of judicial review.

Under section 4 of the Act, the Tribunal is not concerned with the material that may or may not have been taken into consideration by the Government. The Tribunal has to autonomously adjudicate whether or not there is sufficient cause for declaring the association unlawful."

61. In the aforesaid paragraphs, A.B. Saharya, J. has observed that the proceedings before the Tribunal are summary in nature and akin to proceedings relating to a claim under Order XXI, Rule 58 of the Code before amendment in 1976. The Code prescribes a detailed procedure to be followed for adjudicating civil suits and the said procedure requires plaint, written statement, framing of issues, evidence, etc. and is rather lengthy and a technical procedure. This procedure relating to suit need not be followed. It may also be appropriate here to keep in mind the observations and findings of the Supreme Court in the case of *Jamael-e-Islami* on the question of nature of proof and proceedings before the Tribunal.

62. Section 9 uses the words "so far as may be". The words signify that the Legislature's intent does not mandate that the Code should be followed in its entirety, section by section, order by order or word by word. Use of the words "so far as may be" ensure sufficient flexibility and freedom to the Tribunal to follow and regulate its own procedure which should be in consonance with the procedure stipulated as per the Code. The procedure prescribed in the Code can be modified and changed keeping in view the practical requirements, need and necessity. This may be required in view of the object and purpose of the Act and practical problems which may be faced in case the requirements of the Code are strictly and entirely followed. In *Abdul Haji Mohd. Versus R.R. Naik* AIR 1951 Bom. 440, it was held that the words "as far as practicable" must be construed to mean to the extent it is practicable. Bombay High Court in a subsequent decision *Keshrimal Jeevji Shah and another versus Bank of Maharashtra and others*, 2004 (122) Company cases 831 has held that whenever words like "as far as possible" or "as far as practicable" etc. are used, the legislative intent is not to apply all the provisions in their entirety, but the provision have to be applied "as far as possible" and subject to such modifications as the context as well as the object and purpose of the enactment require. The setting in which the words occur, the statute in which they occur, the object and purpose behind the enactment and mischief which is sought to be taken care of and remedy which are relevant in determining to what extent and subject to what modifications the required enactment should be applied.

63. Section 5(5) of the Act states that the Tribunal shall have power to regulate its procedure in matters arising out of discharge of its functions including the place/places at which it will hold sittings. Therefore the aforesaid sub-Section gives flexibility and freedom to the Tribunal to fix and regulate the procedure to be followed subject of course to the requirement of fair and just hearing. Sub-section (6) to Section 5 further stipulates that the Tribunal while making the enquiry will have the power of a civil court in respect of matters stipulated in clauses (a) to (e). As per Section 4(3) of the Act, the Tribunal has to hold an enquiry within a period of six months from the date of issue of Notification under sub-section (1) of Section 3. There is no provision under which this time can be extended. The use of the expression "as far as may be" in Section 9 of the Act and the power given to the Tribunal to regulate its own procedure in Section 5(5) of the Act indicates that the strict procedure as stipulated and applicable to trial of civil suits is not envisaged or required. One will also have to keep in mind the time limit of six months within which the Tribunal is required to complete the enquiry and answer the reference. A summary procedure or a hybrid procedure which may be akin or similar to and in consonance with the procedure for adjudication of claims in the Code can be followed.

64. The above ratio and reasoning will equally apply to Rule 3(1) which uses the expression "as far as practicable" the rules of evidence as laid down in the Indian Evidence Act, will apply. It may be noticed that Rule 3(1) uses the words "rules of evidence" and does not use the words "provisions of the Indian Evidence Act, 1872 would apply". Therefore general principles or rules of evidence underlying the Evidence Act are applicable to the extent practicable. In these circumstances, I do not think that the Act or the Rules envisage and require an elaborate and a detailed procedure for summoning of each and every witness mentioned in the charge-sheets, presence and examination of witnesses present at the time of preparation of panchanama or all police officers who were involved in the investigation. Summoning of record in each and every case or all the police officers or witnesses who may be even located in remote areas and different districts will be counter-productive, cumbersome and time consuming. There will be concerns about safety and security of the persons appearing as well as the records which may have to be summoned or produced. Normally, cases relied upon by the central government will be cases of serious crimes and the chargesheet etc. will be voluminous and number of witnesses also substantial. The nature of material in most cases where unlawful activity is alleged would include oral evidence, documentary evidence, as well as confidential inputs based on information received from intelligence. These cases can have inter-State or trans-border involvement and a large number of persons are normally involved in conspiracy. This aspect cannot be ignored as proceedings before the Tribunal have to be pragmatic and provisions of the Code and the Evidence Act have to be applied to the extent possible and practicable. Therefore keeping in view the volume and nature, geographic constraints of its production, constraint of time, the strict principles of the statute regarding mode and manner of proof of document need not be complied with. Strict rules and principles of proof of documents and materials as prescribed in the Evidence Act if followed may not be practical and pragmatic.

65. Summoning of the entire case record from courts or even furnishing of certified copies of documents is a cumbersome exercise which may not be undertaken unless there is some doubt about the veracity or genuineness of a document or material and the same is under challenge. It is well known fact that the copying agencies take their own time to supply certified copies and sometimes due to technical reasons as well as procedural problems, certified copies cannot be supplied within reasonable time or may not be supplied as the documents have not been given exhibit numbers. Calling for records and summoning them would delay the present proceedings and also may necessitate adjournments in trials. It may be also noted that most of the witnesses produced were either the investigative officers or officers presently dealing with the cases. They have deposed on the basis of their personal knowledge or official records. These witnesses have referred to occurrence of the incidents as recorded/mentioned in the official files or in their personal knowledge. They have deposed about the statement of witnesses/confessions recorded and available in their records. They have also deposed about recoveries made pursuant to these statements on the basis of personal knowledge or official records. These officers whenever requested were orally cross examined or through interrogatories. In cross examinations, suggestions have made and their testimonies have been taken on record. In these circumstances, I am inclined to take on record the uncertified copies of documents wherever the authenticity and genuineness of the documents/statements is not disputed. In case of dispute, I have examined the nature of dispute and doubts raised to decide whether or not evidence, documents or material should be taken into consideration.

Hearsay

66. Mr. Ashok Aggarwal, Advocate has submitted that hearsay evidence has to be completely excluded in view of Section 60 of the Evidence Act, which requires production of direct evidence. The term "hearsay evidence" in legal sense means evidence given by a testifying witness on a statement made on some other occasion when it is intended as evidence of truth or what was asserted. Evidence is hearsay when tendered to prove the truth of the facts asserted, not when tendered simply to show that the statement was made. "Hearsay evidence" can have various connotations as it can be first hand when a witness states that he had heard someone else say or second hand when the deponent states that he was told that someone else said. It can be oral or documentary, of a fact or an opinion. Hearsay evidence because of lack of opportunity of cross-examination or oath, depreciation of truth because of repetition or embellishment, incentive to conceal or mislead and other reasons is generally regarded as devoid of probative value. In this connection, Mr. Ashok Aggarwal, Advocate had referred to several judgments on hearsay.

67. Rule of hearsay has exceptions. Admissions and confessions are exceptions to the hearsay rules. In *Sahoo vs State of UP*, AIR 1966 SC 40, it was held as under:

"5. Admissions and confessions are exceptions to the hearsay rule. The Evidence Act places them in the category of relevant evidence, presumably on the ground that, as they are declarations against the interest of the person making them, they are probably true. The probative value of an admission or a confession does not depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession, as the case may be....."

68. This objection was also raised before the Supreme Court in *Jamaat-E-Islami Hind* (supra) (see para 5 at page 435). However as noticed above the Supreme Court in *Jamaat-E-Islami Hind* (supra) has held that material which would not be admissible in criminal trial can be considered and evidence need not be confined to legal evidence in strict sense. However the tribunal should assess the credibility of the material.

69. Admissions can be used against the persons making them in view of Sections 17 and 21 of the Evidence Act, though they are not a conclusive proof of matters admitted. Admissions duly proved are admissible evidence irrespective of the fact that the party making them has appeared in the witness box or not. Indeed, in some cases, it has been held that an admission, though not a conclusive proof of the facts admitted, may be shown to be wrong, creates estoppel and shifts the burden of proof on the person making the admission or his representative in interest. Unless admission is successfully withdrawn or proved erroneous, it is the best evidence against the person making it.

70. In many cases confessions or admissions have been made by the deponent-accused and they have accepted their connection with SIMI and even their involvement in unlawful activities. In some cases they have accepted that they have worked in collaboration or in conspiracy with other members of SIMI. This admission is being treated as an admission of the deponent that he was/is a member of SIMI. Section 2(p) of the Act refers to conduct of the members. In this manner conduct of the members is subject matter of enquiry. Admissions made by the members are relevant and admissible. The association or organization is affected because of the statutory consequence envisaged by Section 2(p) of the Act when members of an association undertake unlawful activity or activity punishable by Section 153A or 15B of IPC.

Pragmatic Approach on Evidence and Material

71. In the present case, SIMI was declared as an unlawful association on 27th September, 2001 and the ban has been extended thereafter till today from time to time except for a small period. Membership or connection with an unlawful association can result in prosecution under Sections 10 and 13 of the Act. Necessarily, therefore, an unlawful association

or its members will conduct activities under a cover and in clandestine manner. Their activities will rarely and in most cases will not be in open and full public view. Camouflage, deceptions and cover-up tactics will be adopted. Equally, it has to be remembered that general public may not want to testify and give evidence in such cases for fear and threat of reprisal. Like in cases of conspiracy, an unlawful association of its members may adopt a veil of secrecy to achieve their common goal. Inference therefore will have to be drawn from overt acts for which evidence is available about indulgence or existence of "unlawful activities" and "unlawful association" as required by Section 2(o) and 2 (p) of the Act. The veil of secrecy with regard to actions and inactions, in most cases can only be pierced on inference being drawn from the acts which are proved and established.

72. At the same time, as observed in *Jamaat-E-Islami Hind* (supra) the Tribunal must reach and form an objective satisfaction as to "sufficient cause". This requires presence of relevant material which can be relied upon and accepted and not mere *ipse dixit* of the Central Government. In *Jamaat-E-Islami Hind* (supra) the Supreme Court has observed and held that principles of natural justice must be complied with and a fair procedure should be adopted.

Pre February 2008 and post February, 2010 material and evidence

73. Section 4(3) of the Act authorizes the Tribunal to hold enquiry and to call for further information as may be necessary from the Central Government or any office bearer or member of the association. This Tribunal has been given wide powers to call for details and information. This power is not restricted/limited to what has been stated in the Notification or the background note.

74. Keeping in view the aforesaid clause and nature of enquiry which is required to be conducted it is held that the Tribunal can go into even instances and evidence collected even after the date of Notification i.e. 5th February, 2010 for deciding whether or not there is sufficient cause to ban SIMI. Similar view has been taken by the earlier Tribunals.

75. With regard to pre 7th February, 2008 incidences and materials, the stand of the Central Government is that the same can be referred to if it has nexus or interconnection with what has happened after the said date i.e. 7th February, 2008. It is further submitted that the first three Tribunals have upheld the ban and held that SIMI is an "unlawful association". The fourth Tribunal in its report on merits has given several findings in favour of the Central Government but for technical reasons the reference was answered against them. It is further stated that in view of the said order passed by the Supreme Court the operation of the Order dated 5th August, 2008 has been stayed. The earlier Tribunals have also held that deposition of witnesses with regard to incidents prior to the earlier ban cannot be disregarded and treated as irrelevant for evaluation of material which has been produced before the Tribunal after the date of enforcement of the last ban. It has been emphasized that if there is continuity and interconnection then this aspect has to be taken into consideration. I have relied upon and referred to material/acts post 2007 for adjudicating the present reference. Reference to pre-2008 material/acts has been made wherever necessary.

Statements recorded under the Maharashtra Control of Organised Crime Act, 1999

76. Section 18 of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act, for short) reads:

"18. Certain confessions made to police officer to be taken into consideration.—(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

(3) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under sub-section (1) shall also be recorded before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is

to be sent under sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of any Assistant Civil Surgeon."

77. The aforesaid Section begins with a non-obstante clause and the provision applies notwithstanding Cr.P.C. or the Evidence Act. The provision makes the confession made to a police officer not below the rank of Superintendent of Police admissible in evidence when recorded in writing or on other electronic devices from which sound or images can be produced provided certain other conditions are satisfied. The aforesaid Section is similar to provision in Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as TADA, for short) after amendments pursuant to the decision of the Supreme Court in *Kartar Singh versus State of Punjab* (1994) 3 SCC 569. The validity of the said Section is not under challenge and appears to be covered by the judgment of the Supreme Court in the case of *Kartar Singh* (supra) and *Peoples Union of Civil Liberties versus Union of India* (2004) 9 SCC 580.

78. Mr. Ashok Aggarwal, advocate referred to some observations in the case of *State (NCT of Delhi) versus Navjot Sandhu and others* (2005) 11 SCC 600. However, in the said case the Hon'ble Judges of the Supreme Court have observed that they have refrained from saying anything contrary to the legal position settled in *Kartar Singh* (supra) and *Peoples Union of Civil Liberties* (supra), rather than expressing doubt and letting the matter rest there. The jurisdiction of this Tribunal is limited and confined by the statute under which reference is made. This aspect therefore is not required to be considered and even otherwise cannot be considered in view of the Supreme Court decisions.

79. The Prevention of Terrorism Act, 2002 (POTA for short) unlike TADA did not make admission of an accused admissible against a co-accused, an abettor or conspirator. However, MCOC Act like TADA, makes admission of persons admissible against an abettor or conspirator provided they are tried for the same case together with the accused. In *State versus Nalini and others* (1999) 5 SCC 253, K.T. Thomas, J. has held that Section 15 of TADA enables confessional statements of an accused made to a police officer admissible in a trial of such person. It has been further held that confessional statements will hold good even if the accused is acquitted under TADA offences but is tried for offences under any other law (See, para 81 at page 304). However, K.T. Thomas, J. has held that confessions are substantive evidence against the maker but not against the co-accused. They can be only used as corroborative material to support substantive evidence (See, para 99 at page 309). D.P. Wadhwa, J. has held that confession of an accused is admissible against a co-accused as well as substantive evidence though it is a different matter as to what value is to be attached to a confession against a co-accused etc. This would fall in the realm of appreciation of evidence. Confession is substantive evidence and admissible both against the co-accused and the maker (See paras 415-416 at page 404). Qadri, J. has held that Section 15 of TADA will apply notwithstanding the provisions of Cr.P.C. or the Evidence Act and therefore confession of an accused in the trial of a co-accused, abettor or conspirator is admissible and is substantive evidence subject to the condition that the co-accused, abettor or conspirator is charged or tried together in the same case with the accused (See, para 672 at page 571, paras 679-680 at pages 572-573).

80. Section 18 of the MCOC Act will not strictly apply to the present proceedings as these are not criminal proceedings. However, statements as admission can be relied upon before the Tribunal. It will be incongruous to hold that statements in nature of confession or admission can be relied upon in criminal trial but not before this Tribunal as the proceeding before the Tribunal are Civil in nature. Statements recorded under Section 18 of the MCOC Act will carry more evidentiary value as compared to statements recorded under Section 161 Cr.P.C. or interrogation statements/reports.

Repeated Bans

81. It was submitted that Section 6(1) of the Act stipulates that ban once imposed shall remain in force for a period of two years from the date on which the Notification becomes effective. The first ban was notified on 27th September, 2001. Relying upon several decisions interpreting Section 144 Cr.P.C. it was contended that repeated bans are not envisaged. It was submitted by Mr. Ashok Aggarwal, advocate that Section 6(1) does not in specific terms permit repeated bans.

82. It is not possible to accept the said contention. Object and purpose of the Act is different from the object and purpose behind Section 144 Cr.P.C. Powers under Section 144 Cr.P.C. are exercised by police authorities and are meant for a temporary period of two months. A temporary order can be extended as per Section 144 Cr.P.C. for a period not exceeding six months. The statute has therefore fixed two time limits. The last one is intended to be the outer limit. The legislative intent is clear. On the other hand, the Act deals with unlawful activities by an association or its members. The purpose and objective behind the Act is to protect public, public order and ensure peace and tranquility in the society. It is easy to visualize and accept that repeated bans may be required in some cases where unlawful activities continue. Illegal activities will furnish a fresh cause and a ground to reimpose the ban on expiry of the first ban. If the contention of Mr. Ashok Aggarwal, advocate is to be accepted then an association can remain underground for two years and thereafter operate without any fear because the ban cannot be reimposed or only reimposed after a gap. This will be contrary to the legislative

intent. Every time a ban is imposed on the ground that the association is unlawful, the procedure prescribed under Sections 3 and 4 of the Act has to be followed. The ban is not automatic. The ground realities and factual matrix in the last two years has to be considered. R.C. Chopra, J. in his order has rejected a similar contention observing:—

Learned counsel for the Association has vehemently argued that the Act confers no power on the Central Government to renew a ban and as such, the present notification dated 26-9-2003 is illegal and unwarranted. This contention cannot be sustained firstly for the reason that there is nothing in the Act to suggest that the Central Government has no power to issue successive notifications under Section 3(1) of the Act. If this submission is sustained, the result would be alarming as an unlawful Association, after a ban for a period of two years, may revive and re-start its unlawful activities with impunity and without any check. This would be not only against the interests of the country but also contrary to the aims and objects of the Act which intends to control and curb the activities of unlawful Associations."

Members and the Association

83. Section 2(p) of the Act has been quoted and interpreted above. Both clauses (i) and (ii) state that an association can be banned if its members undertake "unlawful activity" as defined in Section 2(o) of the Act or undertake activities punishable under Sections 153A and 153B, IPC. It was submitted that if some misguided ex-members of SIMI are guilty of having undertaken unlawful activity, the entire association itself or other ex-members of the association cannot be blamed and made to suffer. This argument, though attractive, cannot be accepted in view of the language of Section 2(p) of the Act. Further the present case is not of one or two stray instances of some individual members indulging in criminal acts, as will be apparent from the subsequent portion of this Order. A holistic and broad view has been taken.

84. Additional Solicitor General has referred to the constitution of SIMI which has been placed on record by Mr. Misbahul Islam and Mr. Humam Ahmed Siddiqui and the order passed by B.N. Chaturvedi, J. Reference was made to the emblem of SIMI which prominently displays a rifle and blood. Central Government has stated that the constitution and the objects of SIMI are unlawful. It is claimed that they represent a hardline or a fundamentalist ideology. Per contra, it was urged by Mr. Ashok Agarwal, advocate that an association has the right to promote and propagate ideologies, even if they are not acceptable and objected to by others including majority.

85. There may be some merit in the submission made by Mr. Ashok Aggarwal, advocate but every association or an organization has to take responsibility and is liable if members of an association drift to indulge in and adopt violence to achieve their objective. When any association or an organization promotes and supports a cause or objective and its members indulge in violence, the association/organisation becomes liable. Members of an association are characterized by principles and thinking of an association and vice-versa. Actions and reactions of the members speak for the association. Any association or organization which promotes an orthodox and a conservative thought or even extreme liberal thoughts, carries a baggage of risk that the members or supporters may adopt violence and accordingly must share responsibility and consequences. It is not the thought or objective which is objectionable, but the violence. Violence in any form or on any ground or any violent protest regardless of the cause or justification cannot be accepted. In a huge country like India with diversity there can be problems, difference of opinion and even abrasions, which may not be unacceptable, but if violence is resorted to, there will be no end. A good or a genuine cause or thought does not justify violence.

Locus Standi of Mr. Humam Siddiqui and Mr. Misbahul Islam

86. On behalf of the Central Government, it was submitted that Mr. Humam Siddiqui and Mr. Misbahul Islam cannot represent SIMI or appear and defend the present proceedings as they do not state or claim that they are office-bearers or members of SIMI and, therefore, they are not an adverse party under Section 137 of the Evidence Act, who can cross-examine the witnesses. Reference is also made to the reply/written statement filed by Mr. Humam Siddiqui and Mr. Misbahul Islam and the averments made therein. It is submitted that they do not accept and admit that they are members of SIMI *in presenti* but their stand is that SIMI has ceased to exist. It is stated that before the earlier Tribunals and even before the Supreme Court SIMI is appearing and contesting. It is argued that erstwhile members or office-bearers of SIMI cannot be an adverse party and contest the proceedings as Section 4(3) of the Act makes reference to the office-bearers and members thereof. My attention is drawn to the Section 6 (2) of the Act, which entitles a 'person aggrieved' to approach the Central Government at any time and difference in the words was highlighted. It is further stated that *lis* is between the Central Government and the association. Accordingly, it is submitted that the entire cross-examination and arguments on behalf of Mr. Humam Siddiqui and Mr. Misbahul Islam should be ignored.

87. The intention behind Section 4 (3) of the Act is to ensure that the association or its members or office-bearers should have a right and an opportunity to contest the proceedings before the Tribunal. Even members of the association can contest the proceedings. Once an association is banned, its members or office-bearers cannot contest the proceedings without exposing themselves to the peril or danger of prosecution. In fact they would be committing an offence under the Act. Mr. Humam Siddiqui and Mr. Misbahul Islam cannot accept that SIMI is in existence in spite of the ban imposed in September, 2001 without fear of prosecution and punishment under Section 10 and 13 of the Act.

88. The reply/written statement of Mr. Humam Siddiqui and Mr. Misbahul Islam has to be read as a whole and in totality. Portions thereof cannot be singled out and read in isolation. It is clear from the reply/written statements of Mr. Humam Siddiqui and Mr. Misbahul Islam that they are contesting the proceedings on behalf of the SIMI, which they state has ceased to exist but they would plead and want that the ban should be struck down /not continued.

89. The main grievance and objection raised by Mr. Humam Siddiqui and Mr. Misbahul Islam is that SIMI was never a criminal organization or indulging in unlawful activities prior to the ban, but being erstwhile president of SIMI Uttar Pradesh Zone and ex-member they are entitled to object to the ban and resist the case for ban put up by the Central Government on behalf of association, which was banned and therefore has ceased to exist. Their rights are affected. They have further stated that the acts or grounds pleaded by Central Government to justify the ban were, if at all committed by the erstwhile members or erstwhile sympathizers but their acts cannot be a ground to ban SIMI. In fact during the course of arguments, the Central Government itself relied upon some portions of the reply/written statements and it was pleaded, that SIMI continues to exist.

90. It is the stand of the Central Government that SIMI has never ceased to exist even after the first ban vide order dated 27th September, 2001. Mr. Humam Siddiqui had appeared as a witness before the first Tribunal constituted by the notification dated 27th September, 2001 and in the order dated 31st March, 2002, it is mentioned that Mr. Humam Siddiqui was the erstwhile president of SIMI, Uttar Pradesh Zone. Copy of the affidavit filed by Mr. Humam Siddiqui has been filed. In the said affidavit he has also stated that he was the president of SIMI, Uttar Pradesh Zone till 27th September, 2001, the date on which the SIMI was declared an unlawful association. It may be noted here that the Central Government has referred to statements of P.A. Shibly and Hafeez Hussain enclosed with the affidavit of PW-51; Mr. S.S. Khot, in which it is mentioned that Mr. Misbahul Islam was elected as the president of SIMI in February, 2006. My attention was also drawn by the Central Government to the statement of Hafeez Hussain enclosed with the affidavit of Mr. S.S. Khot (PW-51), wherein it is stated that Mr. Misbahul Islam of Bengal was elected as all India SIMI president in February, 2006, in Kerala.

91. Section 4(3) of the Act states that “After considering the cause, if any, shown by the association or the office bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified”. The words “office-bearers” and “members” in Section 4(3) have to be liberally interpreted keeping in view the object and purpose behind the said section which is to give opportunity to contest the claim of the Central Government. This opportunity should be fair and not a mere formality. These two terms “members” or “office bearers” therefore, will include the office bearers and members of the association, when the first ban was imposed on SIMI. In this case an interim order was also passed at the time of the first ban in terms of the proviso to Section 3(3) of the Act.

92. While there is some force in the contention of the Central Government that they have not invoked and granted sanction for prosecution under Sections 10 and 13 of the Act, when Dr. Shahid Badar had contested the proceedings, the apprehension and doubt of Mr. Humam Siddiqui and Mr. Misbahul Islam that they may be prosecuted under Sections 10 and 13 of the Act because of their appearance before the Tribunal cannot be left untouched by silence. The objections and cross examination by Mr. Humam Siddiqui and Mr. Misbahul Islam will be treated as cross examination for and on behalf of SIMI. Their appearance before the Tribunal, it is hoped and expected, will not be a ground to prosecute them under Sections 10 and 13 of the Act. The contention of the Central Government that Mr. Humam Siddiqui and Mr. Misbahul Islam do not have locus standi and the cross examination should be ignored is therefore rejected.

Existence of SIMI

93. Three earlier Tribunals have held that SIMI continued to exist in spite of ban on 27th September, 2001. Gita Mittal, J. also held that SIMI continues to exist, though the said order has been stayed by the Supreme Court. SIMI has been filing Writ Petitions before the High Court. SIMI had filed Writ Petition No. 6030/2007 for desealing of their property which was dismissed vide order dated 12th March, 2010. Evidence discussed below shows that SIMI continues to exist.

Proceedings

94. After the background note was filed, vide Order dated 15th March, 2010, notice was directed to be issued under Section 4 (2) of the Act to SIMI to show cause within 30 days. It was directed that notice would be served on SIMI at their available/last known principal offices and also on the earlier principal office bearers of SIMI as per list furnished by the Central Government. Names of Mr. Humam Siddiqui and Mr. Misbahul Islam are mentioned in the list furnished by the Central Government.

95. On 16th April, 2010, Mr. Mobin Akhtar, Advocate had appeared on behalf of Dr. Sahid Badar. He was directed to be served with grounds/background note and file response/objections within 15 days. On the next date i.e. 1st May, 2010, appearance was made on behalf of Mr. Human Ahmed Siddiqui and he was given time to file reply/response to the background note/notification. Dr. Sahid Badar was present before the Tribunal on 1st May, 2010, and had asked for permission to place on record his affidavit. Mr. Mobin Akhtar, Advocate, who had earlier appeared for Dr. Sahid Badar was discharged as Dr. Sahid Badar had engaged Mr. Jawahar Raja, Advocate to appear for him. Dr. Sahid Badar had stated that he had decided not to contest the declaration of the Central Government.

96. Most of the proceedings of the Tribunal were held in Delhi but keeping in view convenience of the witnesses and as voluminous records were to be examined and produced, proceedings were also held in Maharashtra, Kerala, Karnataka and Madhya Pradesh. It may be noted that before the last Tribunal public witnesses had appeared when proceedings were held in different States. Proceedings were also held during summer vacations of the Delhi High Court and on some Saturdays.

97. Central Government was asked to file evidence by way of affidavit. In all 114 affidavits have been filed by the Central Government³. 64 witnesses were cross-examined by Mr. Ashok Aggarwal, Advocate and these witnesses have been given numbers PW-1 to PW-67 (there are no PW-14 and 15). One witness PW-66, D.S. Yadav was not cross examined as he had produced confidential material which was not shown and made available to Mr. Human Siddiqui and Mr. Misbahul Islam. Other witnesses were examined by way of interrogatories with the consent of the counsel appearing for Mr. Human Siddiqui and Mr. Misbahul Islam. In this report these witnesses have been referred to as IWs. List of witnesses is enclosed as annexure II to this Report. Two witnesses, namely, Mr. Shivajirao and Mr. Ambadas were not produced for cross-examination therefore their affidavits have not been examined and considered. One public witness Mr. K.N. Vijayvargiya had appeared at Indore. However, the statement made by the said witness is not material.

KERALA

98. Witnesses from the State of Kerala, Mr. V.K. Akber (PW-1), Mr. S. Sasidharan (PW-2), Mr. K.R. Kannan (PW-3) and Mr. T.K. Vinodkumar (PW-4), in their affidavits have stated that SIMI is a radical fundamentalist organization, which was formed on 25th April, 1977 at Aligarh as a front organization of the Jamaat-e-Islami Hind to urge the Muslim youths and students to follow and spread its philosophy. They have stated that SIMI activists have been involved in carrying out illegal and anti-national activities in the State of Kerala in a clandestine manner. The facts stated in the affidavits by the aforesaid four witnesses and their cross-examination is discussed below.

Mr. V.K. Akber (PW-1), Deputy Superintendent of Police, former Investigating Officer in Crime No. 356/08 of Edakkad P.S.

99. On the basis of reliable information, the SI of P.S. Edakkad arrested Abdul Jaleel on 18th October, 2008, for aiding and assisting a banned organization in Jammu and Kashmir and registered Crime No. 356/08. Investigation was taken over by the Joint Investigation Team headed by Shri T.K. Vinod Kumar (PW-4), the then DIG on 23rd October, 2008 and PW-1 was designated as the investigating officer. Investigation was conducted from 23rd October, 2008 to 28th October, 2008 wherein 23 persons have been arrayed as accused out of which 14 have been arrested, 4 died in encounter and 5 are absconding. Investigation disclosed that the accused persons had entered into a criminal conspiracy with intent to incite, facilitate and advocate terrorism and thereby to wage war against the Government of India and had conducted classes under the shadow of 'Noorrisha Tareequath' at different places of Kannur, Malappuram and Ernakulam districts. As per the final meeting of accused on 14th August, 2008 at Neerchal, Kannur five accused were to be sent to J&K to be trained by LeT and six accused proceeded to Hyderabad from Shoranur. Five accused reached J&K, joined LeT, collected arms and ammunitions and created disturbance in the valley. Four accused were killed in two separate encounters with the security forces in J&K and one accused managed to escape.

100. During investigation, one accused - Surfras Navas was arrested. He confessed that he held official position of Office Secretary at Delhi office of SIMI and attended meetings of SIMI both in India and abroad. PW-1 has stated that it was learnt that the accused-Surfras Navas had associated with LeT, arranged funds for training of the accused in J&K and also assisted in the escape of the main accused Nasir and Shafas outside India. The case was handed over to National Investigation Agency (NIA) on 8th February, 2010.

101. In the cross examination, Mr. V. K. Akber (PW-1) has stated that he was the Investigating Officer in Crime no. 356/2008 of Edakkad P. S. from 23rd October, 2008 to 8th February, 2010, and then the matter was transferred to NIA and on a written request by NIA, he had assisted them in recording his evidence and information. He has further stated that the statement made in para 2 of the affidavit (Exhb. PW-1/A) stating that the SIMI is a radical Fundamentalist organization, was not his personal opinion and has been made on the basis of the intelligence information, statement of Surfras Navas and on the basis of investigation done in Binanipuram P. S., Ernakulam Distt. and Wagaman, P.S. cases. He has stated that when FIR in Crime No. 56/2008 was registered Surfras Navas was not arrayed as an accused and the charge sheet (Exhb. PW-1/C) which was filed on 23rd January, 2009, therefore, only mentions the offences committed by Surfras Navas and not his association with SIMI. He has further stated that the statement of Surfras Navas was recorded when he was in police custody, in presence of officers of other investigating agency for over a period of 10 days. No public witness was present at that time. He has further stated that on the basis of the statement given by Surfras Navas further evidence was collected. He has denied the suggestion that he has not filed the statement of other co-accused. He has stated that Surfras Navas was associated with SIMI. He has stated that the statement made in Para 2 of the affidavit was not his personal opinion and has been made on the basis of the intelligence information and statement of the Surfras Navas. He has further stated that

3. List of 114 affidavits filed before the Tribunal.

investigation reveals that SIMI is a front organization of Jamaat-e-Islami (Hind). He has further stated that the content of the para 3 of the affidavit is correct. He has stated that it is wrong to say that a false case was registered at the behest and the instance of Central Government to substantiate the case for ban declared by the Central Government in February, 2010. He has stated that the case was registered on 18th October, 2008 and he took up the case on 23rd October, 2008.

Mr. S. Sasidaran (PW-2), Deputy Superintendent of Police and Investigating Officer of CR No.159/2006

On 15th August, 2006, 18 activists of SIMI assembled at the Happy Auditorium, Ernakulam, conducted a secret meeting and the main accused delivered speeches against the nation for the failure to protect the interests of Indian Muslims. Shri K.N.Rajesh, the then SI conducted a raid, upon receiving reliable information and found 18 persons who had in their possession pamphlets of SIMI and some books containing seditious materials such as a Pakistani publication "Mass Resistance in Kashmir". He arrested 5 of them who were later released on bail by the Kerala High Court. The case was later transferred to Joint Investigation Team (JIT) and he subsequently took charge on 15th September, 2008. During the course of investigation he questioned witnesses/persons connected to the crime, arrested 12 of them and produced them before the JECM Court, North Paravur. Some of the accused were released on bail. One accused Nisar has not been arrested. Accused Shadu and Ansar Moulvi were involved in Cr. No. 257/08 of Mundakkayam P.S. in connection with a camp organized by SIMI. The accused persons belong to different places in Kerala and were brought together to Binanipuram for the purpose of conducting a meeting of SIMI. The statement of the witnesses and the documents seized from the accused on 15th August, 2006 show that the accused had assembled to propagate the ideology of the SIMI and for recruiting members. The investigation was completed and sanction was obtained. The investigation of the case was handed over to NIA on 8th February, 2010. He has stated that the above facts shows that the SIMI had been indulging in anti-national activities and intended to bring about the cessation of a part of territory of India and the ban imposed is legally justified.

In his cross examination PW-2 has stated that he was the Investigating Officer in the FIR of Crime No. 159/2006 from 15th September, 2008 to 8th September, 2010 and there were two more investigating officers before him who had conducted the investigation. He has further stated that he had personal knowledge of the case prior to joining investigation on 15th September, 2008 but he had not filed the complete record of the case before the Tribunal as the case has been handed over to NIA along with the complete file. He has denied the suggestion that he had not filed the complete records as it would show that the accused mentioned in the FIR, had no connection with SIMI. He has stated that the two accused are in jail and 15 accused have been granted bail and one person was yet to be arrested. He has stated that he is aware of the bail order dated 29th October, 2008 passed by the Session Judge, Ernakulam in the case of Shameer and Abdul Hakim which was later on modified by the High Court. (He has produced the orders before the Tribunal). He has stated that he was aware of the pamphlets and the books which he has mentioned in Para 3 of the affidavit and he had not filed the same with his affidavit. He has further stated that the aforesaid averment was not made to prejudice the mind of the Tribunal and the copy of the pamphlets and the books could be produced. He has stated that whether the book "Mass Resistance in Kashmir" should be banned in India was pending consideration. He has further stated that it was correct that in September, 2008, statements of police officers were recorded in FIR. He has stated that it was wrong to suggest that he had deliberately prolonged the investigation in the case so that the accused persons could be implicated in other false cases. He has further stated that the Happy Auditorium is owned by a private person and accused Nisamudheen had booked the said Auditorium on the pretext that they were to hold a Quran class in the said Auditorium. The receipt book was seized and filed before the criminal court. He has further stated that he has not made any false statement at the instance of the Central Government in order to make out a case for ban. He has denied the suggestion that he has not filed complete records so as to prejudice the mind of the Tribunal and the case file is with NIA. He has further stated that the affidavit states the true facts and was not his personal opinion.

Mr. K.R. Kannan (PW-3), Superintendent of Police, Kerala, Investigating Officer of Cr. No. 257/08 of

Crime no. 257/08 Mundakkayam P.S. was registered on 21st June, 2008 regarding a camp conducted by SIMI, which had continued for 3 days at Thangalpara. The investigation of Joint Investigation Team (JIT) revealed that the camp was engaged in physical training, arms training etc. and also classes for 'Jihad in India' were conducted. The investigation revealed that there were 43 accused persons and out of which 26 were arrested. A Scorpio car bearing registration no. KL7/ AP4655, used by the accused was seized from the Attingal on 11th November, 2008. Samples were collected from the vehicle. FSL report establishes presence of explosive substance. The JIT also seized the counter foil of sale of 2 Air Guns and 1000 Pellets from Cochin Armoury on 11th November, 2008. The Air guns were used for target practice during the camp. On 2nd February, 2009 the accused Ameel Parvez was produced before the court and was formally arrested. The test identification parade was conducted on 5th February, 2009 at Kottayam and some of the witnesses identified the accused Ameel Parvez. The accused was handed over to Police custody on 9th February, 2009 for 5 days and was interrogated and a confession statement was recorded, on the basis of which the Investigating Officer recovered the remnants of Petrol Bombs and the FSL report reveals that the remnants contained explosive substance. The experts opined that the substance were a portion of an exploded explosive device which if exploded could cause serious damage to human life and property.

On 27th February, 2009, accused Hafiz Hussain and P. A. Shibly were produced before the court and were formally arrested and remanded to sub jail, Kottayam. The test identification parade was conducted on 5th March, 2009 and some of the witnesses identified both the accused persons. On 2nd May, 2009, accused P. A. Shaduly and Ansar Nadvi were produced before the court and were formally arrested and sent to police custody on 8th May, 2009 and the confessional statement of accused P. A. Shaduly revealed that one motor bike bearing registration no. KA-01/R/3983 was used by Asadulla for going to the Wagaman camp and further used for bike racing training at the camp. The investigation revealed that accused Ameel Parvez, Safdar Hussain and Abdul Sathar had stayed in Lekha Lodge at Wagamon for a day during the period of the camp. The register of the lodge was seized. The case has been transferred to NIA on 8th February, 2010. He has stated that the above facts shows that the SIMI has been indulging in anti national activities and intended to bring about the cessation of a part of territory of India and the ban imposed is legally justified.

105. In the cross-examination, PW-3 has stated that the statement that SIMI was a radical fundamentalist organization was not his personal opinion but based on intelligence information. He has stated that the training was organized on 2nd week of the December, 2007 and he came to know about the said fact when a FIR was registered by the local Police on 21st June, 2008 and the FIR was registered on the basis of the report made by the Deputy Superintendent of Police (Intelligence). The report was made in writing to SHO, Mundakkayam and he did not remember the date of the report. He has further stated that the camp was organized between 10th to 12th December, 2007 but these dates were not mentioned in the affidavit (Exhb.PW-3/A). He has further stated that these facts were mentioned in the interrogation statement of accused Ameel Parvez which was recorded on 9th June, 2009. He has stated that he had personally visited the place where the camp was organized and it was a place which is frequently visited by tourists. He has stated that he saw the word SIMI written in the Malayalam and English on the rock which was about one kilometer from the place where the secret meeting was held. Photographs (Exhb.PW-3/T-1) were taken. He has further stated that the FIR was registered after six months. Before the test identification parade was conducted he had recorded statement of Mr. Anand Das on 23rd January, 2009. He has further stated that no action was taken against the owner of the Scorpio car and when the vehicle was seized it was in a running condition. He has stated that no license is required for purchasing and using air guns in Kerala. PW-3 has stated that Mohd. Ameel Parvez in his statement had admitted that from 1992 onwards, he was working with SIMI. He has stated that he had not registered the case at instance of the Central Government. He has stated that the all the available records had been submitted and the affidavit (Exhb.PW-3/A) was not merely based on his personal opinion.

Mr. T. K. Vinodkumar (PW-4) IPS, Deputy Inspector General of Police (Internal Security), Special Branch CID HQs, Police Department, Government of Kerala and Nodal Officer of the State for SIMI related matters

106. A Case Crime no. 159/06 was registered in Binanipuram P. S. on receiving information that the activists of SIMI had conducted a secret meeting at the Happy Auditorium, Kerala on 15th August, 2006. A raid was conducted and 18 persons were found engaged in a secret meeting. The police seized some printed material and a book named "Mass Resistance in Kashmir". Five persons were arrested and produced before the court and were remanded to judicial custody. Some of the accused were released on bail. The case was later on transferred to Joint Investigation Team (JIT). During the investigation by JIT it was revealed that the remaining 13 persons had actually taken active involvement in the crime. 12 accused were arrested and produced before the court. One accused Nisar has not been arrested. The accused P. A. Shaduly and Ansar Moulavi were later found to be involved in Crime no.257/08 of Mundakkayam P. S. The case was transferred to NIA on 8th February, 2010.

107. Crime no. 257/08 was registered in Mundakkayam P. S. on receiving information that a training camp was conducted by SIMI activists. The investigation revealed that the camp had continued for 3 days at Thangalpara. The case was later on investigated by JIT. The camp was used for physical training, arms training, handling of explosives, etc. and for classes in 'Jihad in India'. The investigation revealed that there were 43 accused persons and out of which 26 were arrested. A Scorpio car bearing registration no. KL7/AP/4655, used by the accused was seized from the Attingal on 11th November, 2008. The FSL report shows presence of explosive substance in the samples which were collected from the vehicle. The JIT also seized the counter foil for sale of 2 Air Guns and 1000 Pellets from the Cochin Armoury on 11th November, 2008. The Air guns were used for target practice during the camp. The JIT conducted TIP of the accused Ameel Pervez, Hafiz Hussain and P. A. Shibly and some of the witnesses identified them. On the basis of the confessional statement of Ameel Pervez, the JIT recovered remnants of Petrol Bomb and the FSL report confirms that remnants were portion of an exploded explosive device. A motor bike used during the camp was also seized. Investigation reveals that the accused Ameel Parvez, Safdar Hussain Nagori and Abdul Sathar had stayed in a lodge at Wagamon for a day during the period of the camp. The register of the lodge was seized. The case was transferred to NIA on 8th February, 2010.

108. Crime no.356/08 was registered in Edakkad P. S. on the basis that one Abdul Jaleel was associated with and assisting a terrorist organization. The Investigation was taken over by the JIT. Investigation disclosed that a criminal conspiracy was hatched with intent to facilitate terrorism in India and conduct classes at different places of Kannaur, Malappuram and Ernakulam districts to propagate terrorism. In the meeting held on 14th August, 2008 at Neerachal, Kannaur, it was decided that young men should be sent to J&K and accordingly five accused reached J&K, joined LeT, and got trained. Four accused were killed in an encounter with the security forces in J&K.

109. The main accused Nazeer, Shafas, Ibrahim Moulavi, Ayub, Ummer Farook and Zainudeen were also involved in Cr. No. 438/08 of Madivala P. S. registered in connection with Bomb explosion in Bangalore. Accused Surfras Navas, an Ex-SIMI activist, held an official position in SIMI at Delhi and had attended meetings of SIMI both in India and abroad, was associated with LeT. He had arranged funds for training of the accused in J&K, and assisted in the escape of the main accused Nazeer and Shafas outside the country. The JIT completed the investigation and the charge sheet was filed on 21st January, 2009. The absconding accused Sainudheen was arrested later and the final charge sheet was filed before the court on 17th August, 2009. The case was then transferred to the NIA on 8th February, 2010. He has stated that the above facts shows that the SIMI has been indulging in anti national activities with the intent to bring about cessation of a part of territory of India and the ban imposed is legally justified.

110. In the cross examination, Mr. T. K. Vinodkumar (PW-4) has stated that the content of his affidavit (Exhb. PW-4/A) are based on the official records as well his personal experience. He has stated that he had examined various documents, papers including source reports, intelligence reports and had guided investigation. He has further stated that the source reports were confidential and he would not be able to talk about the number and nature of these reports. He has stated that the two primary sources relied upon by him were the documents and information gathered during the process of the supervision of the three cases. He has stated that the averments made in the affidavit were not his personal opinion but were facts and based upon information available with the intelligence Department from diverse sources. He has stated that he took charge of FIR no. 159/2006 on 21st August, 2008 and he did not remember the exact date on which the JIT took the investigation in FIR no. 159/2006. He has further stated that he had not appeared before the previous tribunal but the then IG, Mr. N. C. Asthana had filed an affidavit in which the FIR no. 159/2006 was mentioned. He has stated that he did not have any intimate knowledge about the order dated 29th September, 2008 passed by the Session Court. He has stated that as a Supervisory Officer, he was aware that the findings were reversed by the Appellate Court but the exact details were known to the Investigating Officer. He has stated that it was not correct that Investigation in FIR No. 159/2006 was deliberately delayed to implicate some of the accused in another case. After preparing the charge sheet, sanction was obtained from the government of Kerala and at that point NIA took over the case. He has stated that it was not correct that FIR No. 257/2008 was registered on the basis of investigation conducted in FIR No. 159/2006 and some of the accused in FIR No. 159/2006 have been framed as accused in FIR No. 257/2008. The persons involved were identified in the TIP. He has further stated that the documents linked with the crime in FIR No. 159/2006 and material evidence collected from site in crime No. 257/2008 showed involvement of SIMI. He has further stated that all details of material evidence were available in the crime file which is now with the NIA. He has stated that FIR No. 257/2008 was registered on the basis of Intelligence reports. He has further stated that the camp was conducted in December, 2007 and the exact dates were available in the file and known to the Investigating Officer. He has further stated that he had personally visited the place of camp, accompanied by other officers. This was a remote place, frequented by some tourists. He has stated that he had not visited the place of the camp as an Investigating Officer and, therefore, was not required to take public witnesses. He has stated that he was the Supervisory Officer and, therefore, was not required to prepare a site plan. He has stated that the exact dates when classes on Jehad were held were recorded in the crime file, which was with the NIA. He has stated that the observation regarding Jehad was derived on the basis of report, statements of witnesses and interrogation. He has stated that he was aware and had knowledge that the Scorpio bearing registration No. KL 7/AP/4655 was seized but was not aware of the minute details and particulars. He has stated that the information that accused Ameel Pervez was associated with SIMI came to their knowledge during investigation of the case and the accused and some other persons were involved in activities of SIMI in other states. Reports of investigating officer and intelligence reports received from other States prove and established the said fact. He has stated that Surfras Navas in his statement has admitted that he was an ex-SIMI activist and had held an official position. Enquiries made in his neighbourhood have also confirmed the said fact. He has stated that these cases had not been registered at the instance of the Central Government to establish and substantiate their claim for ban on SIMI and these three cases reveal three different faces of SIMI in Kerala. The FIR No. 159/2006 shows ground level activities and recruitment by SIMI in Kerala. Crime No. 257/2008 shows their intention for arm training and Crime No. 356/2008 shows their links with agencies outside the country such as LeT. He has stated that during investigation he came to know that young persons of impressionable age were called from different parts of the State in meetings for the purpose of indoctrination and the documents circulated in the meeting show the intention to enrol young minds as members of SIMI. Documents were available in the crime file, which was with NIA. The material, which was circulated in the meeting was seized and submitted to the courts.

111. Evidence of the witnesses has been partly discussed above while referring to the statement of various witnesses.

DISCUSSION OF EVIDENCE FROM KERALA

112. In FIR No. 356/2008, Police Station Edakkad it is stated that a watch was kept on accused-Abdul Jalil as he was a strong sympathizer of SIMI and has immense displeasure against the ban. Watch was also kept on his mobile phone and it was realized that he was making calls to Jammu & Kashmir and was connected with terrorist activities and encounters at Jammu & Kashmir. PW-1, Mr. V.K. Akber, has stated that accused No. 23 in FIR No. 356/2008, Police Station Edakkad, Sarfras

Navas was an ex-SIMI activist and held post of Office Secretary of Delhi office of SIMI. PW-1, Mr. V.K. Akber was not cross-examined on this statement. PW-4, Mr. T.K. Vinodkumar, Nodal Officer, has similarly stated that Sarfras Navas was Office Secretary of SIMI. In the cross-examination, PW-4, Mr. T.K. Vinodkumar, was asked whether this statement was based upon the interrogation report or any other material. In response, PW-4, Mr. T.K. Vinodkumar, has stated that this was based upon interrogation of Sarfras Navas and inquiries from the neighbors. The exact details were available with the Investigating Officer. Interestingly, PW-4, Mr. T.K. Vinodkumar, has stated that some Malayalis were killed in Jammu and Kashmir and thereafter FIRs were registered and investigation was done in Kerala. PW-3, Mr. K.R. Kannan, has placed on record two photographs Exhibit PW-3/T-1 of rocks on which word SIMI is written both in Malayalam and English. These photographs were taken while conducting investigation in FIR No. 257/2008 near the site about one kilometer away from where Wagaman camp was held. The word SIMI was written in bold letters and was meant to be clearly visible even from a distance. I am not placing reliance upon the materials, pellets, etc. collected from the site of Wagaman camp.

113. Mr. T.K. Vinodkumar (PW-4), had produced before the Tribunal photocopy mark 'B' of Malayalam literature/pamphlet and its English translation mark 'A'. These documents were produced during cross-examination and were not given exhibit numbers as certified copies were not filed on record. Mark 'A' refers to Ikhwan Conference from November 12-14 at Malappuram, Kootilamgadi, SIMI Kerala Zone. It contains inflammatory material against persons prescribed as non-believers and need to establish Islamic Shariat and need to have international society for realization of "Muslim Ummath".

114. Exhibit PW-2/R-2 is an order passed by the High Court of Kerala dated 10th December, 2008 in which it has been observed as under:-

"5. I have considered all the relevant circumstances. There are definite indications to suggest that some of the 18 persons who had attended the meeting on 15/8/06 at Panayikulam have later been allegedly involved in very serious crimes. They have been arrested from out side the State. It is shown that those persons have connections with the people carrying on seditious activities. There are also indications to suggest that all the 18 who had collected there had gone there to take part in the conclave. It was certainly not an open meeting. There are indications also to suggest that the participants in the meeting on 15/8/06 had connections with the SIMI- a banned organization which is now allegedly functioning under different names....."

115. It may be interesting to note that the counsel appearing for Mr. Humian Ahmad Siddiqui and Mr. Misbahul Islam had placed before the Tribunal a bail order dated 29th October, 2008 passed by the Session Judge, Ermakulam, which was marked Exhibit PW-2/R-1.

116. Certified copies of the two FSL reports dated 23rd May, 2009 and 31st July, 2009 show presence of potassium chloride, aluminium powder and sulphur. In the first report the remnant glass bottle etc. have been declared to be portions of explosive devices of common origin but which can cause serious damage to human life and property. Accused Ameel Pervez, Shibly P.A. and Hafiz Hussain have been correctly identified by some of the witnesses and the TIP have been placed on record. It has also been stated by PW-3 and PW-4 that Ameel Pervez, Safdar Nagori and Abdul Sathar had stayed in Lekha Lodge for one day during the training camp, which was organized at Wagamon between 10th-12th December, 2007. Safdar Nagori was General Secretary of SIMI at the time when it was banned for the first time on 27th September, 2001. He was absconding till he was arrested in 2008.

DELHI.

117. Seven witnesses have been examined from Delhi and I am discussing the relevant material for the purpose of present enquiry. PW-5, Mr. C.B. Sharma is retired ACP, Delhi Police and his affidavit pertains to FIR No.532/01 police station New Friends Colony, New Delhi, which was registered on 28th September, 2001 at 12.50 A.M. night immediately when SIMI was banned under the Act. Along with the affidavit, the witness has enclosed some of the seized materials in the form of articles from the Islamic Movement Magazines and other articles, which were seized. He has also enclosed copy of the alleged downloaded material from the CPU seized from the office of the SIMI and transcripts of audio tapes. He has stated that Shahbaz Hussain was the Hindi editor and Press Secretary of the SIMI on the relevant date and Safdar Nagori was the Secretary General of SIMI and Chief Editor Hindi Magazine. He has stated that Safdar Nagori was absconding and was declared proclaimed offender but later on was arrested in FIR No.120/2008 at Indore. Certified copy of the relevant material obtained from the court has been placed on record. The trial in the said case is still pending. This witness is only relevant to show and establish the nature of activities undertaken by the SIMI on the date of ban i.e. 27th September, 2001 and association and relationship between Safdar Nagori, Shahbaz Hussain and SIMI. In this regard, it will be appropriate to state here that the three Tribunals have upheld the ban on SIMI in 2001, 2004 and 2006 relying upon the material placed before them.

118. Mr. Govind Sharma, Inspector, SHO police station Amar Colony appeared as PW-7 and has stated that FIR No. 304/2001 was registered at police station Kamla Market, New Delhi after militants had carried out series of bomb blasts. In the said case vide judgment dated 5th July, 2007 the accused were convicted under Section 122 Indian Penal Code and

Section 4(b) and Section 5 of the Explosive Substance Act in view of the recovery of 1.900 Kilograms of black RDX, four detonators, two remote control detonating devices and one wireless set etc. However, the accused were acquitted for lack of evidence under Sections 121 and 121-A Indian Penal Code. It was held that the prosecution has failed to establish that the accused were members of banned organization, particularly, Hizbul Mujahideen and were terrorists of the organizations involved in the bomb blasts, which took place in Delhi between January, 2000 to July, 2001. In some other cases, judgments of acquittal had already been passed. Against the judgment of conviction, appeal has been filed by the accused and the same is pending. PW-7, Govind Sharma has stated in his affidavit that the accused in the said case had disclosed their relations with SIMI and involvement of other accused persons. It may be relevant to state here that in the said case the charges were only framed under Sections 4 and 5 of the Explosive Substance Act and no charge was framed under Sections 121/121-A/123/120-B Indian Penal Code or under the provisions of the Act. This judgment, therefore, is of no assistance to the Central Government.

119. PW-8, Mr. Ramesh Chander Lamba, Inspector Special Cell, New Delhi has deposed about the FIR Nos. 40/2005 and 190/2005. FIR No. 40/2005 is under Sections 121/121-A/122/123/120-B Indian Penal Code read with Section 25 of the Arms Act and Sections 4 and 5 of the Explosive Substance Act and 18, 19 and 20 of the Act. FIR No. 190/2005 is under Sections 121/121-A/122/123/307/186/353/120-B Indian Penal Code read with Sections 4/5 of the Explosive Substance Act and Sections 25/27 of the Arms Act and Sections 18/19/20 of the Act. In the first FIR there is reference to RDX and other explosive material, which were recovered. In the second FIR, there is reference to AK-56 rifles, detonators, dynamites etc. It is further stated that vide judgment dated 8th January, 2010, learned Additional Sessions Judge-II, North Delhi, Delhi has convicted two accused persons, namely, Hamid Hussain and Mohd. Shariq and has acquitted four other accused persons. Hamid Hussain and Mohd. Shariq have been convicted under Section 5 of the Explosive Substance Act read with Section 120-B Indian Penal Code and Sections 18 and 23 of the Act. Accused Mohd. Shariq has also been convicted under Section 411 Indian Penal Code in FIR No. 132/2004. The conviction was on account of the fact that the two accused were members of the terrorist outfit Laskar-e-Toiba. Both Iftekhar Ahsan Malik and Haroon Rashid, who were stated to be members of SIMI, have been acquitted in the said judgment. However 10,000 Singapore dollars which were not claimed by Haroon Rashid were directed to be confiscated to the State under Section 26 of the Act. Therefore, evidence of PW-8, Mr. Ramesh Chander Lamba is of no assistance to the Central Government.

120. Mr. L.N. Rao (PW-9), Assistant Commissioner of Police, Special Cell, Southern Range, police station New Friends Colony, New Delhi is the Nodal Officer. He has referred to eleven FIRs, which have been registered from 2001 to 2008.

121. Mr. L.N. Rao (PW-9) has stated that the FIR No. 04/2007 police station Lodhi Colony was registered on 25th January, 2007, when accused Mohd. Iftiqar Alam was arrested at Metro Station Seelampur, Delhi with 2.5 Kilograms RDX and 2 electronic detonators. He had stated that he was an active member of SIMI when he was in Patna. The said accused has been convicted and sentenced to five years rigorous imprisonment and fine of Rs. 1,000/- under the Explosive Substance Act. The said witness has also referred to 5 more FIRs registered in Delhi after bomb blasts on 13th September, 2008 being FIR Nos. 166/2008, 130/2008, 418/2008, 419/2008 and 293/2008 registered in different police stations in New Delhi.

122. These FIRs have been examined while examining the evidence of PW-10, Sanjeev Kumar Yadav.

123. Mr. L.N. Rao (PW-9) has also filed an additional affidavit enclosing therewith copy of the writ petition No. 6030/2007 titled *Students Islamic Movement of India Vs. The Secretary Home and Other*, which is marked Exhb.PW9/4 and the judgment dated 12th March, 2010 is marked Exhb.PW9/3. This writ petition as is apparent from the cause title, was filed on behalf of the SIMI. The judgment shows that Dr. Shahid Badar had appeared in the said writ petition as erstwhile president of SIMI. The prayer made was that the premises of the association should be desealed. It may be noted here that the learned Judge while dismissing the writ petition vide judgment dated 12th March, 2010 had observed that unlawful association itself was seeking restoration of the premises, while it continues to be a declared unlawful association.

124. Mr. Sanjeev Kumar Yadav (PW-10), Assistant Commissioner of Police, Mehrauli, New Delhi has deposed about serial bomb blasts in Delhi on 13th September, 2008 between 5.55 P.M. to 6.30 P.M. killing 26 persons and injuring 133 persons. This had lead to registration of FIR Nos. 166/2008 police station Kairol Bagh, 130/2008 police station Greater Kailash, 418/2008 police station Connaught Place, 419/2008 police station Connaught Place and 293/2008 police station Tilak Marg. In these FIRs, initially various provisions of Indian Penal Code, Explosive Substances Act and Information Technology Act were invoked. It is stated that the aforesaid FIRs also relate to live bombs, which were detected at Central Park at Regal Cinema and Children Park, New Delhi. It is stated that on the same day terrorist group "Indian Mujahideen (IM)" has sent an e-mail to various media and news channels with headline "Message of Death" and took the responsibility of the blasts. This e-mail along with other e-mails have been dealt with separately. As per the affidavit, several accused, including Mohd. Saif, Mohd. Sadique Sheikh and Kayamuddin Kapadia were/are connected and members of SIMI. Along with his affidavit, PW-10, has filed copy of the disclosure statements made by Mohd. Saif, Exhb.PW10/3, Kayamuddin Kapadia, Exhb.PW10/4 and Mohd. Sadique Sheikh, Exhb.PW10/5. Statements of these accused were not recorded under Section 164 Cr.P.C. Kayamuddin Kapadia in his statement has stated that he had joined SIMI because he wanted to take revenge for Gujarat riots in 2002. He has further stated that SIMI was divided into two groups i.e. Shahid Badar group

(preaching group) and Safdar Nagori group (practical/executive group). He had pointed out that Safdar Nagori group believes in violence, use of power and killings. He has stated that when Safdar Nagori was arrested in 2008, he along with his associate Taukeer, became head of the SIMI group headed by Safdar Nagori.

125. Mohd. Sadiq Sheikh in his statement has stated that he used to attend weekly meetings of the SIMI, where he met Riyaz Bhatkal, Abdus Subhan and others. Jehadi speeches were delivered in these meetings of SIMI.

126. Mohd. Saif has stated that he was an active member of SIMI and Indian Mujahideen. At the instance of Mohd. Saif, from the room of Atif Ameen incriminating material like inflammatory songs, books (speeches), CDs etc were recovered. The incriminating material has been furnished in the form of CD, which has been marked Exhb.PW10/7. At the instance of Mohd. Saif, from a house at Jamia Nagar, several articles relating to Atif Ameen were recovered. From the mobile of Atif Ameen; data and 16 audio/video clippings and photographs have been downloaded. Some video clippings show banner of Indian Mujahidin relating to Ahmedabad blasts; IEDs explosives in red and blue colour with timer devices and bags being kept in cars. One of the video clips, shows a Maruti car in which IED explosives were kept, and an ambulance with a Gujarat number plate. One video clipping is of a blast. Mohd. Saif has also identified several other articles belonging to Atif Ameen.

127. Mohd. Saif has stated that he has stayed in a hotel, Udupi, Karnataka, under the same assumed name Rahul Sharma. Mohd. Saif had gone there to purchase explosive materials. PW-10 has produced on record the hotel register with entry in the name of Rahul Sharma on 29th August, 2008. (Page 211-212 Exhb PW-10/6).

128. The receptionist and auto driver has also identified Mohd Saif.

RAJASTHAN

129. There are no PW-14 and PW-15.

Mr. Satyendra Singh Ranawat (PW-16), Additional S.P., Anti-Terrorist Squad, Jaipur, Rajasthan.

130. Mr. Satyendra Singh Ranawat (PW-16), Addl. Superintendent of Police, Anti Terrorist Sqaud, Jaipur, Rajasthan. He has filed three affidavits being Exhb. PW-16/1, 1A and B. He was cross examined on two dates 17th May, 2010 and 28th June, 2010. He was the Investigating Officer of Special Investigating Team regarding Jaipur blast cases on 13.05.2008. In these blasts 70 persons killed and 186 persons were seriously injured. He has stated that he received secret information during investigation of the bomb blast cases in Jaipur and interrogation reports of the Gujarat police in connection with serial bomb blasts on 26th July, 2008 in Ahmedabad city. They reveal that the accused Sazid was a member of SIMI before the ban in 2001. On 28th December, 2001 a raid was conducted and SIMI activists were arrested and the said accused Sazid absconded and came to Kota, Rajasthan with his family in 2002 and changed his name to Salim. On this basis, FIR No. 15/ 2008 was registered. During investigation it was found that Sazid @ Salim was not only carrying on activities of SIMI but also indulging in militant and anti-national activities and had formed a core group by inducting several persons viz. Munnawar, Imran @ Raja, Atikurrahman @ Aatik, Mehandi Hassan, Isak, Najakat, Amanullah @ Aman, Yunus and Nadim. Munnawar was appointed chief of SIMI, Aatik was appointed secretary and Imran @ Raja was appointed as a treasurer of the Core Group. Accommodation for Salim was provided by one Dr. Ishak at Kota in 2005. The meetings were also held at other places. Salim visited Jodhpur and held meetings of SIMI along with his associates and met several persons who were associated with SIMI in October 2007, January 2008 and March 2008. He collected funds by beguiling persons. For the purpose of militant training Imran, Aatik and Mehandi Hasan of the Core Group were sent to Halol (Pawagarh) in Gujarat to undertake a training course in a jungle there from 12th January, 2008 till 14th January, 2008. To prove and establish the said fact PW-16 has referred to reservation chart of Paschim Express and reservation charts/slips from Jodhpur to Surat on 12th January, 2008, register and bill book of Mayur Hotel, Jodhpur, etc. It is also stated that objectionable pamphlets (*Babri Masjid ki Pukar*), literature of SIMI, CDs were seized from his residence on 5th September, 2008.

131. Mr. Satyendra Singh Ranawat (PW-16) has stated that prior to 2008, 10 cases were registered against SIMI activists under the Act in Rajasthan. Post 2008, 9 blast cases have been registered against the activists/members of SIMI and in these 9 cases, 70 people have died and 186 were injured. The details of these 9 FIRs are as under :-

S.No. FIR & DATE

POLICE STN. PLACE OF OCCURRENCE

1. 130/08 13.05.08	Manak Chowk, Jaipur	In front of P.S. Manak Chowk (Khanda) at turning point of Hawa Mahal Bazar
2. 131/08 13.05.08	Manak Chowk, Jaipur	Turning point of Khanda Manihari Tripoliya Bazar (near tala-chavi shop)
3. 132/08 13.05.08	Manak Chowk, Jaipur	Near National Handloom at turning point of Pitaliyan kā rāsta johari Bazar
4. 133/08 13.05.08	Manak Chowk, Jaipur	Near Hanuman Temple water hut Sanganeri Gate
5. 117/08 13.05.08	Kotwali Jaipur	In front of Shop No.238, Nanag Ram & Company
6. 118/08 13.05.08	Kotwali Jaipur	Chhoti Chopar, near Phool wala Khanda
7. 119/08 13.05.08	Kotwali Jaipur	In front of shop no.346 Tripoliya Bazar

8.120/0813.05.08 .	Kotwali Jaipur	In front of Hanuman Temple Chandpole Bazar
9.121/0813.05.08	Kotwali Jaipur	In front of shop no.17 Manglam Electricals (parking place) Chandpole Bazar

132. In the 9th FIR, there was no explosion and a live bomb was detected at 8.58 p.m. and defused.

133. The projectiles used in the bomb were ball bearings. Detailed description of the bombs and the material used has been given. In all the 9 FIRs, cycles were used to plant the bombs. This witness has also made reference to the e-mail dated 14th May, 2008 (Exhb.PW-16/B-2) which was sent from e-mail i.d. guru_ahindi_Jaipur@yahoo.co.uk from a cyber-café at Sahibabad, near Delhi. The computer i.e. the CPU along with hard disk were traced out and seized. It was noticed that along with the e-mail, three films of 3-4 seconds each were also attached. The first film showed a person handling an assembled bomb at 12.15 p.m. with a background sound similar to that of a fast moving train. The second film had a bicycle with a bag placed in front of the Kotwali police station, Jaipur which later exploded on the same site. The third film had another cycle with bag on the back carrier of the cycle placed at another site. Frame number 129489 of cycle near Kotwali at choti chaupad was also mentioned in the four page e-mail sent by Indian Mujahideen. As per Mr. Satyendra Singh Ranawat (PW-16) the investigation established this e-mail was sent by one Shahbaz Hussain r/o. Mohalla Katara Bazar, Bhadoi (U.P.) and temporary resident of 155/177 Hata Sulema Maulawi Ganz, Lucknow. He was taken into police custody on 25th August, 2008 from Lucknow and interrogated thereafter. It is stated that Shahbaz Hussain was the editor of 'Islamic Movement' - a monthly magazine published by SIMI. Photocopy of the said magazine has been placed on record along with affidavit (Exhb.PW-16/1) as part of Exhb.PW-16/7. Mr. Madhukar Mishra-owner of a cyber café at Sahibabad identified Shahbaz Hussain as the person who had sent e-mail from his cyber café in the name of Indian Mujahideen from e-mail i.d. <guru_ahindi_jaipur@yahoo.co.uk>. The TIP of Shahbaz Hussain has been enclosed with affidavit (Exhb.PW-16/B) at internal page 44 as part of Exhb.PW-16/B-4.

134. Mr. Satyendra Singh Ranawat (PW-16) had stated that Mohd. Saif, Mohd. Sarwar Azmi and Saifur @ Saifurrahman were arrested in the aforesaid FIRs registered under the Jaipur Blast cases. The said accused were identified by Mr. Prakash Sain, Mr. Laxman Jajani and Mr. Lalit Lakhwani as persons who had purchased cycles for carrying out the blasts. The TIP in which the accused were identified by Mr. Prakash Sain, Mr. Laxman Jajani and Mr. Lalit Lakhwani along with their statements recorded under Section 161 have been marked Exhb.PW-16/B-5.

135. With regard to identification of Shahbaz Hussain by Madhukar Mishra as the person who had sent the e-mails in connection with the Jaipur blasts it was stated that Madhukar Mishra in his initial statement recorded under Section 161 Cr.P.C. had stated that the person concerned who had sent the e-mails from his cyber café was clean shaven. It was submitted that Shahbaz Hussain had a beard at the time of the arrest. Shahbaz Hussain was arrested on 25th August, 2008 and the e-mails were sent on 14th May, 2008. Within this period a person can grow his beard. Any person can shave his beard and become clean shaven and thereafter re-grow the same. This can be also done to conceal one's identity/appearance and to deceive. It may be relevant to state that in the TIP proceedings, learned Magistrate has mentioned that the accused-Shahbaz Hussain had stated that he had never cut his beard. What was the need and necessity for Shahbaz Hussain to make the said statement at the time of TIP itself causes suspicion and doubt. It cannot be accepted at this stage that he was aware of the statement made by Madhukar Mishra that the person who had sent the e-mail was clean shaven. The fact that the e-mail in question was received on 14th May, 2008 cannot be disputed. There is material evidence to connect Shahbaz Hussain as the sender of the said e-mail. Shahbaz Hussain was editor of "Islamic Movement" - a publication of SIMI.

136. Mr. Ashok Aggarwal, advocate submitted that investigation is shoddy, cycle frame numbers are not mentioned in FSL reports. FSL report at page 207 of Exhb.PW-16/B states that LEDs had been fixed between handle and the front wheel of the cycle and IED was planted to target the police station but in the short film enclosed with the e-mail, the said cycle with frame number 129489 the bag is shown on the carrier of the cycle. I am not impressed with the so called discrepancies. Central Government has explained these discrepancies in their short note/written submission. These are matters of detailed trial before the criminal court. In the short video in respect of a cycle at Kotwali police station a bag is shown tied up on the handle of the cycle. It cannot be denied that the cycle bombs were used and 70 people died and 186 were injured in the Jaipur blast on 13th May, 2008. The e-mail with the short films clearly shows that this was prepared by the person who was associated with the said blasts. This e-mail was sent from a cyber café in Sahibabad, near Delhi. Madhukar Mishra, the owner cyber café has identified Shahbaz Hussain as the person who has sent the said e-mails. It was submitted that the e-mail consisted of one document file and three attachment files but Madhukar Mishra had stated that he had copied one file on the terminal/computer. This has also been explained by the Central Government in their response stating that Madhukar Mishra had stated that he had copied one file but attachment could have been loaded before the e-mail was transmitted. It was submitted that there was delay in seizing the computer. This is not material for the present proceedings. Interestingly, in the written submissions filed by Mr. Humam Siddiqui and Mr. Misbahul Islam they have admitted that Shahbaz Hussain was the editor of "Islamic Movement", the official magazine of SIMI prior to its ban. In their reply/written statement, it was denied that Shahbaz Hussain was editor of any magazine. On the question of age of Shahbaz Hussain as described by Mr. Madhukar Mishra, witness-Mr. Pradeep Mohan Sharma to PW-16, I do not find there is any serious discrepancy to doubt and ignore the evidence of PW-16.

Mr. Thangkhanlal Guite (PW-17), Inspector General of Police (INT.)

137. He has referred to FIRs which were registered in 2001 against members of SIMI. He has stated that 17 criminal cases have been registered against SIMI activists, out of which 11 cases have been registered after SIMI was banned. He was, however, not aware whether other cases are still pending or decided. In these cases, 38 SIMI activists/leaders have been arrested and 14 of them are in judicial custody and 25 have been released on bail. In one case FIR No. 345/2001, one Mr. Niyamat Ali has been convicted vide judgment dated 18th December, 2007 passed by the ACGM court, Bikaner. However, the accused has been released under the Probation of Offenders Act on furnishing personal bond of Rs.20,000.

138. He has stated that Mohd. Ilyas, against whom FIR No. 665/2001 was registered under Section 10 of the Act, had also been arrested in FIR No. 15/2008 registered in Police Station, Special Crime and Economic Offence (S.O.G), Jaipur on 23rd August, 2008. He has stated that Mohd. Ilyas had continued to be a member of SIMI even after the ban. However, he has stated that he was not aware whether any particular incriminating material was recovered from Mohd. Ilyas though the said material was recovered during investigation of FIR No. 15/2008.

MAHARASHTRA**Mr. Ajinath Satpute, Mr. Satish Deshmukh, Mr. Dnyaneshwar Ganore, Mr. Vishnu Baburao Jagtap, Mr. Dattatraya Bapurao Patil, Mr. Prakash Hingmire, Mr. Anil Nivrutti Lambate, Mr. S.D. More, Mr. Sangram Sangle, Mr. Subhash Panse and Mr. Chhagan (PW Nos.18 to 28)**

139. They are the witnesses, who have deposed about FIRs registered in 2001. Their statements are not required to be discussed in detail. All the said witnesses have stated that activities on behalf of SIMI are still continuing and members of SIMI were hardcore fundamentalists, who were supporting terrorist and militant activities. PW-24, Mr. Anil Nivrutti Lambate has stated that the accused in the said case were found to be addressing people stating that Government by putting ban on SIMI has mala fide committed a criminal act against Muslims and will have to pay for the bad deeds. Kashmir should become an independent Muslim country and for this we are even prepared to die. In his cross-examination he has denied that the accused in the said case were not members of SIMI.

Mr. Punjabrao Deshmukh (PW-29), I.O, CR No. 3065/2009, P.S. Murtijapur, Akola, Maharashtra

140. On 19th July, 2009, PI P.R. Giri received information that members of SIMI were organizing a meeting at Chotti Masjid at Mana, near Murtizapur, Akola and accordingly a nakabandi (setting up of check-posts and surveillance) was imposed. He further stated that during this nakabandi an Indica car bearing no. MH 23 E 3773 was stopped by the police and in the presence of two panch witnesses the three occupants of the car namely Abdul Rajjaq, Syed Ibrahim and Masud Khan were questioned.

141. He has stated that on a search of the car, a CD titled "Darusal Quram" and papers written in Urdu were found and seized. Articles which were written in Urdu were translated by Head Constable PS Murtizapur into Marathi and informed the police that the material was objectionable and related to SIMI. A case was registered as CR.No. 3065/09. The CD recovered was also accessed in presence of witnesses with the assistance of a computer professional and it was found that the CD contained 127 files. The two files are as under:

- (i) File No. 8 titled "A 52-014-'Musharay mein khir kaise'" was a speech delivered by one Sayyad Manvar Hussain in which he spoke about Jihad, cross border terrorism and inability of Indian army to stop such terrorism.
- (ii) File no. 16 titled as "A52-025-'Hum badalte hain rukh hawaon ka'" was a speech delivered by one Sayyad Manvar Hussain in which he spoke about freedom of Kashmir was the fight of Islam, Muslim population of India was under the yoke of slavery of the Hindus.

142. He has stated that among 3 handwritten Urdu papers was a pamphlet which was calling upon Muslims to take arms, to take revenge, the need for increased enrolment of youth in SIMI, need for an increased cadre that SIMI should work by changing names. He has stated that on the basis of investigation it was concluded that accused used to provoke Muslims. The sanction was obtained.

143. In his cross-examination he has stated that the CD has 127 files and the break up/names of the said files are mentioned in the Panchnama Exhb.PW-29/A-5. He has further stated that he had received secret information that a secret meeting of SIMI was being held in Managaon on 19th July, 2009. After receiving the secret information, a raiding party was constituted and "Naka Bandi" was undertaken. A car bearing No.3733 was stopped and three accused were apprehended along with the handwritten pamphlet in Urdu, which is marked Exhb.PW-29/A-8(1). Photocopy of the pamphlet was available in the police file. The original of the said document had been sent to a handwriting expert.

144. He has stated that he was not aware that Mr. Virk, the then DGP has stated in a press conference dated 6th August, 2009 that the three persons, who were arrested from car No.3733 were not connected with SIMI. Witness was confronted with press report from Navbharat dated 7th August, 2009, which for the sake of convenience was marked Exhb.PW-29/D-1.

145. He has stated that it is incorrect that story of the said meeting was concocted to support continued ban on SIMI. He has voluntarily stated that in the Urdu pamphlet mentioned Exhb.PW-29/A-8(1), it is mentioned that SIMI should continue with its activities and even after the Malegaon blast, Muslims were being harassed and revenge had to be taken. He has denied that the pamphlet Exhb.PW-29/A-8(1) was planted and was forcibly got written from one of the accused and it was not voluntary or self written pamphlet. He has stated that he had not filed the application on the basis of which order under Section 169 Cr.P.C. Exhb.PW-29/A-7 was passed. The application was not available in the investigating file. It was wrong that deliberately the application had not been filed.

146. He has stated that he was aware that the CD contains religious sermons of Ulema from Pakistan and India but it also contains objectionable materials which have been mentioned in the panchanama. He has stated that he was not aware that Sayyed Munavvar Hussain, Khurram Murad and Hafiz M. Idris, are well known Islamic scholars in Pakistan. He has further stated that he was not aware that these CDs were freely available in the market. He has stated that Exhb.PW-29/D-2 is the certified copy of the application which was filed by the police u/s. 169 Cr.P.C.

147. He has stated that it is incorrect that the facts stated in his affidavit and the materials annexed with it were false and concocted.

148. Order dated 15th February, 2010 passed by JMFC, Murtizapur rejecting the report filed by the IO under Section 169, Cr. P.C. has recorded that some of the pamphlets seized appear to be printed and published only with the intention to destroy sovereignty and integrity of the nation. Similarly, two file Nos. 8 and 16 on the CD indicate that they were prepared with the intention to support secession of Kashmir from India. Ld. JMFC has recorded as under:—

“14. The above mentioned facts emerging from investigation itself shows that accused no. 4 to 8 were members of SIMI and they have taken active participation in respect of conducting meeting of SIMI at choti masjid Mana, provoking peoples present for said meeting, printing, publishing pamphlets, documents and CDs. It also prima facie appears that action of accused persons by way of committing above act directly disrupts or is intended to disrupt the sovereignty and integrity of India. It also appears that the I.O. has not correctly applied his mind to the facts emerging from the investigation and come to incorrect conclusion.

15. For the above mentioned reasons, this court does not agree with the present report filed by I.O. against accused No. 4 to 8. On the contrary, on the basis of above mentioned reasons this court finds that there are sufficient grounds for for (sic)proceedings against accused no. 4 to 8 u/s 10 and 13 of the Unlawful Activities (Prevention Act). As per 45 of said Act no court shall take cognizance of offence under chapter 3 of said Act without previous sanction of the Central Government or any officer authorized by the Central Government in this behalf. Therefore even though this court finds that there are sufficient grounds to proceed against accused No. 4 to 8 still in view of express bar u/s 45 this court is unable to take cognizance. Hence, considering the above discussion, following order is passed.

ORDER

1. The report submitted u/s 169 of Cr.P.C. is not accepted.
2. I.O. is hereby directed to take steps within one month from today for getting sanction of Central Government or authorized officer of Central Government for taking cognizance against accused No. 4 to 8 for offences u/s 10, 13 of Prevention of Unlawful (Activities) Act.
3. I.O. is directed to inform to this Court in writing about what steps taken by him for getting said sanction. After I.O. receiving sanction it be placed before this court so as to enable this court to pass further orders against accused No. 4 to 8.”

149. It is interesting to note that the counsel appearing for Mr. Human Ahmad Siddiqui and Mr. Misbahul Islam had produced before the Tribunal certified copy of the application filed by the police under Section 169 Cr.P.C. for closure.

Shivajirao Tambre (PW-30) IO in CR.No. 3036/2008 PS Vijapur Naka, Solapur City

150. He has stated that accused Khalid Ahmed was arrested at Indore, Madhya Pradesh. Since he was a resident of Vijapur Naka in Solapur city, on 29th March, 2008 a search was conducted at his residence where incriminating articles of SIMI were recovered. A case CR No. 3036/2008, P.S. Vijapur Naka, Solapur was registered against accused and was arrested on 9th July, 2008. He has stated that the case was pending for want of sanction from the state government. He has further stated that the investigation has revealed that inspite of ban members of SIMI continue to carry out unlawful activities and therefore further imposition of ban is in the interest of justice. In his cross-examination he has stated that it was incorrect that incriminating documents were not found at the time of search. The panchanama dated 23rd March, 2008 at page 17 which is part of Exhb.PW-30/A-2 gives some details in

brief of the documents which were seized at pages 19 and 20. He has stated that document no. 1 at page 19 of the panchnama is related to SIMI which is a banned organization. He volunteered that the document mentions how SIMI operates and functions. The document was available in the file with him and could produce the same. (The original document was shown to the Tribunal). Photocopy of the said document was placed on record and is marked Exhb.PW-30/D-1. He has stated that he had read these documents and that they show that SIMI continues to be in existence even after the ban and therefore he considered them to be incriminating. He has stated that apart from serial no.1 one document printed in red ink in Urdu language was incriminating which in marathi means "Raktachi laat dokyapasun ka jaina, mitrachya umbarthiyapasun uthun ka jaina". At the bottom of this document there were statements which instigate Muslims against Hindus. He has stated that he can produce the original document. Photocopy of the said document was marked Exhb.PW-30/D-2. He has stated that it was correct that document Exhb.PW-30/D-2 pertains to the period prior to August 2001 and not 2008 and this paper does not specifically mention or refer SIMI. Copy of the newspapers articles/extracts were marked Exhb.PW-30/D-3.

152. He has stated that in the newspaper cutting dated 03rd July, 2001 word SIMI is mentioned and not in any other document at serial nos. 2-10. He has stated that he had conducted search in the premises of Khalid Ahmed Mohd. Salim Mucchale at Indore and in his residence documents of SIMI were found and seized. He has further stated that he had not seen the FIR in which Mr. Mucchale was arrested at Indore and had not verified from other documents whether Mr. Mucchale was member of SIMI. He has stated that he was not a member of the search party at the residence of Mr. Mucchale.

Atul Sabnis (PW-34) IO in CR.No. 17/2008 PS ATS, Kala Chowki, Mumbai

153. Mr. Atul Sabnis (PW-34) is the investigating officer of FIR No. 17/2008 and was posted with ATS P.S. On 20th August, 2008 a source/ information was received that a known SIMI activist in Pune has given the task of distribution of propaganda and indoctrination material of SIMI. A trap was laid and Firoz Mehboob Pathan a SIMI activist of SIMI was arrested near the Seven Loves Hotel, Pune. From his possession following material was seized:

1. 10 books titled as 'Jihadi Azgar' containing basic rule and guiding towards a holy way of jihad, attainment of paradise on becoming a martyr in the fight against non Muslims,
2. 10 books titled as 'Jihadi Fi Sabi Illah' containing the importance and advantages of Jihad for the common Muslim and in the religion of Islam etc.,
3. 10 books titled as 'Jihadi Fisabillilla Quo' containing the reasons and the rationale behind Jihad , need to fight for those who oppose conversion to Islam etc.,
4. 5 books titled as 'Vafadari Ya Bejari' containing propaganda that the main intention of every Muslim should be to create losses to non-Muslims,
5. 5 books titled as 'Allah ke Rah Me Jihád' containing propaganda that injustice is being treated out to Muslims in India on every front and jihad is necessary and needed.

154. Extracts of the books have been placed on the record with translation and marked Exhb. PW31/A-1 and A-2. Investigation has revealed that one Imtiyaz Babumia Shaikh, a known SIMI activist was an associate of Firoz Mehboob Pathan. Imtiyaz Babumia Shaikh was already in custody in another case. He was also arrested in FIR No. 17/2008. On 31st August, 2008 Imtiyaz Babumia Shaikh, in his statement disclosed names of Ayyaz Yusuf Khan, Nadeem Mohammad Salim Shaikh and Md. Bilal Gulam Rasool Kagzi as persons who had supplied objectionable Jehadi material to distribute to the Muslim youth. The Xerox copy of one Urdu book "Jihad-e-Kashmir Farziyat Fajilat Aur Tarik" and 4 videos CDs containing images of atrocities against Muslims in Gujarat and other atrocities in the world which were recovered from his home.

155. The book titled "Jihad-e-Kashmir Farziyat Fajilat Aur Tarik" mentions alleged atrocities being committed against Muslims in Kashmir by the non Muslims and Indian Government and details and particulars of such incidents highlighting the need for jihad. Four CDs contain: 1.) CD1- images of dead bodies of Gujarat riots and images of Muslims persons from post riot refugee camps, 2.) CD2- images of world' atrocities against 'Muslims accompanied by a voice commentary in Urdu and sub titles in Arabic, 3.) CD3- images of Osama bin Laden and his associate taking credit for World Trade Centre bombing and paying homage to 19 terrorists who died in the bombing, 4.) CD4- Arabic commentary, video footage etc showing the importance and role of Jihad.

156. PW34 has stated that during the course of investigation, it was revealed from the statements of the witnesses that all the arrested accused were related to SIMI and were distributing Urdu books and CDs to provoke Muslim youth towards jihad. Accused Firoz Mehboob Pathan was the Ex President of SIMI Pune division and against him various cases have been registered at various Police Station. In the year 2001, he was also detained for a year. He was in contact with various known SIMI activists such as Safdar Nagari, Abdus Subhan Qureshi alias Taukir and Yusuf alias Mirza Himayat Baig. He has further stated that accused Mohd. Bilal Kagazi, Nadeem Md. Salim Shaikh and Ayyaz Yusuf Khan were also arrested in other crimes and all of them were released on bail. He has stated that inspite of ban, activities of SIMI were still continuing. He has filed the statement of witnesses, after protecting their identities to show the connection between accused and SIMI.

157. In his cross-examination PW-34 has stated that Firoz Mehboob Pathan has been acquitted in the cases which have been decided and has not been convicted in any case. He has denied that the material seized does not disclose connection with SIMI as the sole purpose and objective was to propagate SIMI and to persuade people to join SIMI. In the cross-examination, it was not even suggested that Firoz Mehboob Pathan was not the ex-president of SIMI, Pune division.

Mr. Ashok T. Duraphe (PW-38), I.O. in MCOC, Special Case No. 4/2009 registered with DCB, CID, Mumbai and presently working as Assistant Commissioner of Police, D-1, South, DCB-CID, Mumbai

158. PW-38, Mr. Ashok T. Duraphe is the Investigating Officer in FIR No. 162/2008. He has stated that SIMI activists have regrouped and are carrying on their operations. He has alleged that Indian Muahideen is another face of SIMI. In his affidavit, he has referred to serial blasts in Ahmedabad on 26th July, 2008 and recovery of Improvised Explosive Devices in Surat on 27th July, 2008. Two of the explosions at Ahmedabad had occurred in explosive laden cars and at Surat two live IEDs were discovered in two cars.

159. Prior to the Ahmedabad blasts, TV channels and media had received an e-mail from IM warning that series of blasts would occur. During investigation, it was found that the said e-mail (for the sake of convenience is referred to as the first e-mail for the purpose of this witness) was sent from IP address in Navi Mumbai.

160. Investigations revealed that all four cars were stolen from Navi Mumbai. This prompted the Mumbai Crime Branch to start a manhunt for the persons, who had sent the terror e-mail and also car thief who had stolen the cars, which were used in bomb blasts in Ahmedabad and in Surat. On 23rd August, 2008, another e-mail (hereinafter referred to as the second e-mail for the purpose of this witness) was sent by IM. They claimed responsibility for the Ahmedabad blasts and planting of IEDs at Surat. Investigations revealed that this e-mail had originated from the IP address 121.243.206.151, which was traced to Gurunanak Institute of Research and Development, Khalsa College, King Circle, Mumbai. The e-mail was dispatched from e-mail address Alrabi.alhind@gmail.com. The e-mail clearly warned that lethal weapons for waging war would be used and threatened police officers of Maharashtra and Gujarat with annihilation. The e-mail was designed to instigate and hurt religious feelings by deliberately using derogatory language. The e-mail contains photographs of cars captioned "Your Favourite Toys" and "The Cars that Devastated" and also IEDs captioned "Weapons of Mass Destruction".

161. Two FIRs C.R. No. 314/2008 and 375/2008 were registered in Police Station, ATS Mumbai under various provisions of IPC. The CPU, wireless router, cables and cords used for sending the second e-mail were seized. The investigation was subsequently taken over by Cyber Cell, DCB, CID and then by Criminal Intelligence Unit (Operations), DCB-CID, Mumbai.

162. On 15th August, 2008, Property Cell, DCB-CID, Mumbai arrested a car thief Afzal Matalib Usmani in U.P. During investigation he admitted and confessed car thefts in three FIRs in which he was detained. While interrogating Afzal Matalib Usmani, the second e-mail sent by IM with photographs of the motor cars was shown to him. He identified the motor cars and stated that these cars were stolen by him from Navi Mumbai. These cars were driven by him to Ahmedabad along with his other associates Amin@Raja Ayub Shaikh and Mohd. Mobin Abdul Shakur Khan @ Irfan, who first delivered the cars to Surat and then to Ahmedabad. He admitted that he had loaded explosives in the cars for Surat and Ahmedabad blasts.

163. Accused Afzal Matalib Usmani was arrested in the FIRs relating to the e-mails. On further interrogation at his instance, two more accused Mohd. Sadique Israr Ahmed Shaikh and Mohd. Arif Badruddin Shaikh@Arif Badar were arrested. On the basis of interrogation of Mohd. Mohd. Sadique Israr Ahmed Shaikh two more persons Mohd. Jakir Abdul Haq Shaikh and Ansar Ahmad Badshah Shaikh were arrested for bomb blasts in Gujarat and other States.

164. Statements of Mohd. Sadique Israr Ahmed Shaikh and Mohd. Arif Badruddin Shaikh were recorded under Section 18(1) of MCOC Act. Certified copy of the statement of Mohd. Sadique Israr Ahmed Shaikh has been placed on record as Exhb. PW38/A-5. In his statement, Mohd. Sadique Israr Ahmed Shaikh has stated that they were members of majlis of SIMI and used to attend the majlis where discussions were held on Quran, Hindu-Muslim riots, Babri Masjid and consequences of sacrifice. In his statement, he has given details of how he went to Bangladesh and to Karachi (Pakistan) with some other boys who had Pakistani passports. He has stated that he was given training in explosives, detonators, bombs, switches, timers, local explosives, circuits, etc. in Muzzafarabad, in Umulkura Camp. He stated that he was also taught to operate pistols, AK-47, L.M.G. weapons also.

165. With regard to SIMI he has stated as under:-

"At that time, I used to meet Arif Badar in Saraymir Tahasil, where he runs the Electrical Shop. As both of us are connected with SIMI organization, we both became friends. After we became intimate friends we used to discuss about atrocity upon Muslims. I told Badar that I have received training in Pakistan and the boys should be sent to Pakistan for training and Zihad for protection of Muslim Brothers. He agreed with me on this proposal and gave me assurance to prepare boys for training in Pakistan."

166. He has also given details about bomb blasts from February 2005 to September 2008 and how money used to be transferred and given to them. He has stated that with an intention to terrorize the public, IM has been set up and for the last one year they were sending e-mails to the media.

167. Statement of Ansar Ahmad Badshah Shaikh was also recorded under Section 18(1) of MCOC Act. He has stated that he became a member of SIMI and used to attend their programmes and meetings conducted by SIMI above the clinic of Dr. Shahnawaz. He used to accompany Mohd. Sadique Israr Ahmed Shaikh to the office of SIMI near Kurla Police Station. A camp was organized once a month where they used to discuss issue of Palestine, Siberia as well as of atrocities on Muslims in Kashmir. He has disclosed how he crossed over to Bangladesh and then went to Karachi and to the office of LeT. He confirmed the statement of Mohd. Sadique Israr Ahmed Shaikh that he went to Bhawalpur and went to the office of LeT in Islamabad. There he met Mohd. Sadique Israr Ahmed Shaikh, who was also a school friend. He undertook training at a camp in Muzzafarabad with 100 persons including 4 Indians, which continued for a period of 15 days. They were trained in operating rifles, AK-47, AK-56, pistols and hand grenades. They were made to undergo physical exercise and were preached about jihad. They went to a desert area of Bhawalpur and were taught how to make bombs and given practical training in rifle firing. He was given Rs. 10,000/- and a Pakistani passport and he went from Karachi to Kathmandu and then crossed over to India. He was again paid Rs. 10,000/-. Mohd. Sadique Israr Ahmed Shaikh spoke to him in 2006 about bringing a parcel from Hyderabad. He suspected that the parcel may contain explosives. He left for his native place and avoided Mohd. Sadique Israr Ahmed Shaikh. In July, 2007, he met Mohd. Sadique Israr Ahmed Shaikh and Riyaz Bhatkal. He knew Riyaz Bhatkal, who was a member of SIMI. Riyaz Bhatkal in his bag had brought a circuit, the working of which were discussed between Mohd. Sadique Israr Ahmed Shaikh and Riyaz Bhatkal. However, both of them, i.e., Mohd. Sadique Israr Ahmed Shaikh and Riyaz Bhatkal stated that they had formed IM for the purpose of jihad. After some days, there were bomb blasts in Hyderabad.

168. In the cross-examination, PW-38 has stated that Mohd. Sadique Israr Ahmed Shaikh had not retracted from his confessional statement but Ansar Ahmad Badshah Sheikh retracted a part of his confessional statements. The retracted statements had not been filed before the Tribunal and were not mentioned in the certified copies. The certified copy of the statement of Ansar Ahmed is the original unretracted statement and is enclosed as Exhb. PW-38/A-8. The witness has explanation why this has happened. The retraction was made before the Chief Judicial Magistrate under Section 18 of MCOC Act. The relevant order and the retracted portion had now been filed before me in a sealed cover. The retractions made by Ansar Ahmed are not relevant for the purpose of present enquiry as they are not in respect of his association or association of his co-accused with SIMI.

169. PW-38 has also pointed out recoveries made on the basis of disclosure statement of Mohd. Sadique Israr Ahmed Shaikh from a factory premises in Sewri, Mumbai, which includes revolvers, carbines, magazines and bullets in huge quantities. Panchnama of the said recovery dated 24th September, 2008 is Exhb. PW-38/A-6.

170. Recoveries have also been made on the basis of Arif Badar's disclosure and consists of 10 Kg of Ammonium Nitrate, 15 Detonators, 4 Timers and 8 Kg of ball bearings vide Exhb. PW-38/A-7.

171. Accused Asif Wasir Shaikh, Mohd. Mansoor Asgar Perbhoy and Mobin were interrogated separately. They confirmed their involvement in the crime. They confessed having sent second e-mail from Khalsa College as per instructions of Riyaz Bhatkal and his brother Iqbal Bhatkal by hacking IP address of Khalsa College. At the instance of Asif Wasir, 4 laptops, wireless routers, spy locators and wi-fi location detector, etc. and one pistol with 7 live cartridges, walkie-talkie, objectionable material like jehadi books, audio-video tapes containing inflammatory material, etc. were recovered vide panchnama, which is marked Exhb. PW-38/A-9. Some other persons were also arrested.

172. On personal interrogation of Riyaz Bhatkal and Iqbal Bhatkal, seizures were made in Pune and some more arrests were made. Seizures were also made of incriminating material, which has been marked Exhb. PW-38/A-10. One of the materials, which was seized was Tehelka magazine titled "SIMI Fiction". In the cross-examination several suggestions were given with regard to the said magazine. PW-38 has clarified that this magazine was seized along with other incriminating material. The seizure of this magazine may be wrong but this does not make the witness unreliable or untrustworthy.

173. PW-38 has also referred to the raid conducted at Mangalore wherein 5 hand grenades, cash of Rs. 11 lacs and other incriminating material were seized and some other persons were arrested and Crime No. 242/2008 was registered.

174. Cross-examination of this witness does not shake his statement. The two of the accused in their statements under Section 18 of MCOC Act, viz., Mohd. Sadique Israr Ahmed Shaikh and Mohd. Ansar Ahmad Badshah Shaikh have admitted that they are members of SIMI. They have also admitted involvement in criminal acts which qualify and are "unlawful activities" and have stated that others associated with them were also involved in illegal activities. Name of Riyaz Bhatkal cropped up and it is stated that he is also a member of SIMI.

175. The contention that only two FIRs were registered with regard to the second e-mail and the third e-mail which was sent on 13th September, 2008 warning of blasts in Delhi pursuant to which another FIR was registered is irrelevant. Further, interrogation of American citizen Ken Heywood and the allegation that his e-mail account was used to send the first e-mail and non-registration of FIR with regard to the said e-mail is irrelevant and immaterial. It may be noted here that as per the witness's wifi of Ken Heywood was hacked in Navi Mumbai.

KARNATAKAMr. Jayanth V. Shetty (Pw-46), Deputy Superintendent Of Police, Udupi Sub-division, Udupi Distt. Karnataka.

176: Shri Jayant Vasudev Shetty, Dy. S.P., Udupi sub-division, Karnataka has stated that on 3rd October, 2008, at 10.30 am, the staff of District Crime Intelligence Bureau (DCIB) and SP's special squad raided the house of Mohammed Ali in Mukkacheri, Mangalore upon credible information that he had given shelter to one Riyaz Bhaktal Shabandri, a terrorist and one of the founder members of IM who was responsible for bomb blasts in Mumbai, Delhi, Ahmedabad and Surat. Mohammed Ali admitted upon inquiry that he had given shelter to the said person. The raiding party searched and seized 3 books, DVDs and a CPU pertaining to terrorist activities. Another house at Chembugudde, Mangalore was raided upon information and five live bombs and ten mobile phones were seized. PW-46 has also stated that the house of Mohammed Noushad at Subhash Nagar, Mangalore was also searched and they seized a computer disk and some documents related to Jihad along with a motorcycle. Thereafter the house of one Muddasar Yasin, which was found locked, was also raided. After breaking open the lock a laptop, CDs, cash of Rs. 11,39,850/- was recovered. PW-46 has further stated in his affidavit that the Cr. No: 242/2008 was registered at Ullal Police Station, Mangalore.

177. He has stated that on 5th October, 2008, a car bearing no. KA 03 N-8812 being used by accused Mudasir Yasin was seized from garage situated at Permannur Village near Ullal. He stated that a xerox copy of sale deed regarding purchase of land in Vittalmakki Village and a General Power of Attorney dated 24th January, 2007 in favour of Ahmed Baba Abubakar, a Motorcycle bearing no. KA 19 S-2467 along with its RC, books written in Arabic/Urdu, chemical glassware laboratory products were recovered and seized from the house of Fakir Ahmed in Vittalmakki Village.

178. He has stated that on 16th October, 2008 accused Mohd. Rafiq and Fakir Ahammed were arrested and produced before PSI, Ullal P.S. where they were interrogated and their voluntary statements were recorded pursuant to which on 17th October, 2008, PSI, P.S. Ullal, recovered black oxide, hand gloves, gum tape, aluminium pieces, steel pieces, test tubes, plastic, glycerine bottle, plastic and glass jars, one airgun, one bow made of wood, bamboo and sheet, firing target card, which bears pellet holes marked with pencil, pieces of steel pipes, readymade tent, two mobile phones and such other articles numbering 38. On the same day articles such as drilling machines, spanners, hacksaw blades, battery chargers, battery, tape, angle grinders, chisels, file, pipe wrench, grinding plate, soldering lead coil, nylon thread, glass bowls and similar such articles numbering 41 were seized. PW-46 has stated that on 16th December, 2008, he took over the investigation of the case and recorded statements of accused Syed Md. Naushad, Mohd. Baba Abubakar and Mohd. Ali. Accused-Syed Mohd. Naushad confessed upon interrogation that Mudasir Yasin and Md. Baba Abubakar were members of SIMI and they had enrolled themselves as members of Indian Mujahideen and planned to execute bomb blasts and create disturbance in India. He also stated that on his disclosure the PSI recovered Rs. 8,37,500/- from Eliyas. He further stated that the accused-Mohd. Naushad took them to a house belonging to his father in Mangalore and produced six timers, pen drive, agreement deed, and ID cards of other students. He further stated that accused Ahmed Baba Abubakar led them to recover 20 gelatin sticks, 19 detonators, and four timers from his house.

179. He has stated that the Bank account details of the accused were verified, witnesses were examined and statements were recorded at every stage of the investigation and that the investigation has revealed that the accused who were members of SIMI and its front organization Indian Mujahideen, had been collecting funds from different sources, procuring illegal arms and ammunitions, explosive substances, electrical circuits, timers and conducting conspiracy meetings with an intention to commit terrorist activities between 2004 and 2008. He also stated that they had collected Jihadi literature, SIM cards, fake passports, etc.

180. He has further stated that a charge sheet was filed against 13 accused out of which six were shown absconding and except accused no. 6 all others were in judicial custody.

181. On being cross examined, Mr. Jayanth V. Shetty (PW-46) has stated that he had filed the charge sheet but was not aware whether any charge had been framed. He also stated that he is not the Investigating Officer (IO) of this case at present and that there was one IO before him. He stated that he did not get any statement of the accused recorded U/s 164 Cr.P.C. before the Magistrate; he had recorded the alleged confessional statements (Exhb. PW-46/A-12) but I had not recorded alleged confessional statements marked Exhb. PW-46/A-8 and A-9.

182. He stated that there is an error in the translation in Exhb. PW-46/A-12 at portion A to A at page 123 wherein it is recorded "my guilt pleaded earlier" and volunteered that he had read the original at page 103; the original statement states that Mr. Syed Mohd. Noushad was giving the statement without any fear, coercion or threat. He stated that the first three lines of Exhb. PW-46/A-14 give details of deponent (Ahamed Baba Abubakar), his parentage, address and mobile telephone number. He stated that the words "without fear, coercion or threat" are mentioned in the subsequent portions of the statements at page 138 in vernacular (page 142 of Exhb. PW-46/A-12). He stated that it was correct that at page 139 at portion A to A it is mentioned "without any inducement, threat, promise, fear hereby voluntary giving the following statement regarding my guilt pleaded earlier" is not there in the original. He stated that it is incorrect to suggest that he had not read the translations before certifying them. He further stated that he had verified that the accused persons were members of SIMI and that verification was done during investigation.

183. On being asked how did he come to know and formed an opinion that the accused were members of SIMI, he has stated that the complaint made by Mr. Venketesh Prasanna states that the accused were members of SIMI. Mohd. Naushad in his statement (Exhb. PW-46/A-12) has stated that he along with others were members of SIMI. Further, during the course of investigation, he came to know about two other FIRs registered by Gokul Road Police Station, Hubli, Karnataka and Madiwala P.S. - Bengaluru City.

184. He further stated that Mr. Venketesh Prasanna is a Police officer and he had made the statement on the basis of credible information and he had not filed copy of the "credible information" before the Tribunal. He also denied the following suggestions :

- there is no basis for Mr. Prasanna's statement or the statements in the other two FIRs mentioned above about involvement of SIMI or members of SIMI.
- there is no basis for his opinion that the accused are members of SIMI and false averments are being made in the FIRs about involvement of members of SIMI in criminal activities and these false averments are being cited in other cases.
- he had not filed any material to show that the accused are members of SIMI. He volunteered that he had filed confessional statement of Mr. Mohd. Naushad and Exhb. PW-46/A-12.

185. He stated that he had not recorded and was not the author of the documents (Exhb. PW-46/A-1 to A-11) and volunteered that he was aware of the said documents as he had gone through the file. He stated that he had not summoned any of the panch witnesses to depose before the Tribunal and stated that it was incorrect to suggest that Sr. No. 4 mentioned in property seized vide Panchnama 4 (Exhb. PW-46/A-5, page 53) of his affidavit was not an incriminating material. He volunteered that the book has been filed before the Court. The police file does not contain a copy of the said book.

186. He stated that it was incorrect to suggest that there is no material to suggest that IM is a front organization of SIMI and stated that the confessional statement (Exhb. PW-46/A-12) made by Mr. Mohd. Naushad mentions that they were members of SIMI and IM and refers to the factum that meetings were held at different locations and times, which were attended to by all the co-accused.

187. He stated that it was incorrect to suggest that the witnesses to all Panchnames were not local witnesses. He stated that he was aware of Section 100 (4) Cr.P.C. and it was incorrect to suggest that he did not attempt to get local witnesses at the time of search. He further volunteered that the witnesses were local witnesses and they were from the locality and the dates of arrest of accused were given in his affidavit (Exhb. PW-46/A). He stated that he did have any details of first police remand and these details might be available in the police file. He stated that the accused were in police custody when their statements were recorded.

188. He stated that the dates of arrest of 13 accused are mentioned at pages 7 and 8 of his affidavit. Accused No. 1, Sayyed Mohd. Naushad was remanded to police custody for the first time in FIR No.242/2008 on 10th December, 2008, and was remanded for the first time to judicial custody on 24th December, 2008. He has given details when the accused were in Police custody. The statements of accused No.1 to 6 were recorded by the police when the said accused persons were in police custody and not in judicial custody. Accused No.13, Shabbir was arrested by Pune police after charge sheet was filed in Cr. No.242/2008. He remained in our police custody during the period 6th March, 2009 to 9th March, 2009 and thereafter he was remanded to judicial custody. Accused Nos.5 and 6 were sent to judicial custody on 23rd October, 2008. He stated that FIR No.22/2008 was registered by the ATS, Pune u/s 489 A, B and C of IPC and that there is a typing error in his affidavit. Accused Nos. A-10 and 11 were in custody in some other case after filing the charge sheet. He has stated that as far as his knowledge goes accused No. A-9 was not in custody in any other case and they had not sought police remand for accused Nos. A- 10 and 11. The confessional statements of the accused A-1 to A-6 were recorded u/s 27 of the Evidence Act. He stated that apart from Mumbai Police, he did not remember whether accused Nos. A-1 to A-6 were taken into police custody in some other case. He stated that Mr. Sharath Kumar was a panch witness in two panchnames at page No.43 and 93, (Exhb. PW-46/A-4 and A-10) and at page No. 105 (Exhb. PW-46/A-11). These recovery panchnames were made by the earlier Investigating Officer. He stated that did not, therefore, know whether the said panch witnesses were summoned to the police station. He stated that PSI Shiv Prakash was working under him on the date when panchnama Exhb. PW-46/A-10 was prepared but not in respect of the case No.242/2008. On 17th October, 2008, Mr. Shiv Prakash was the Investigating Officer of the case No.242/2008. He stated that he was not the supervisory officer of Mr. Shiv Prakash on 17th October, 2008, but was entrusted with some other responsible work. He stated that he had applied for sanction for prosecution u/s 10 and 13 of the Act from the State Government and not from the Central Government. The Sanction has been filed before the Court and the same has not been filed before this Tribunal. He stated that it was incorrect to suggest that the witnesses to the panchnames were stock witnesses.

189. The chargesheet (Exhb.PW46/A-16) along with the recovery memos shows that a number of incriminating material for making bombs/IEDs as well as inflammatory material has been recovered on the basis of disclosure statements or otherwise on search. From search of Ahmed Baba Abubakar's house at Halean ganj 20 gelatin sticks, 19 detonators and 4 timers were seized. In his statement recorded on 20th December, 2008, he has given graphic and extensive details of his involvement. For the purpose of the present enquiry this material cannot be ignored. The charge sheet has stated that each one of the 13 accused were members of banned SIMI. This charge sheet was filed after conducting a detailed enquiry by the police in FIR No. 242/2008.

Mr. V.B.Kumbar (PW-47), Deputy Superintendent of Police, HESCOM, Vigilance, Hubli, Karnataka.

190. He has stated that he had conducted investigation in Cr. No. 104/08 of Belgaum city, Karnataka and was conversant with the facts of this case. He stated that the house of Liyakat Ali was searched upon credible information being received and this led to seizure of a Laptop, CDs, books, passports, three mobiles, etc. He stated that the seized laptop and the CDs contained provocative material meant to cause communal disturbances and pertained mainly to Kashmir, Godra massacre, 9/11 incident, activities of Al Qaida and its leader Bin Laden, photos and literature and a forged registration certificate of four-wheeler. A suo motu case was registered and Liyakat Ali's voluntary statement was recorded. On 15th May, 2008 the accused was taken into police custody and as per his statement ATM hacking papers, one air ticket, a black handbag, hand written provocative figures and literature about Islam were seized from his house. He further stated that on 22nd May, 2008 the accused-Liyakat Ali volunteered to produce and at his instance a pen drive containing provocative information and literature was recovered from his house. He also stated that in his laptop the accused had uploaded the most barbaric scenes pertaining to Babri Mosque demolitions, Gujrat riots, Godra massacre, Mumbai serial blasts and pictures of police action on Muslim community during riots and discourses. He has stated that these pictures were seen by his co-conspirators and developed hatred towards non believers of Jihadi theory. He has stated that seven accused were arrested in this case and all of them are active members of SIMI.

191. In his cross-examination, he has stated that the Previous Investigating Officer had filed an affidavit before the earlier Tribunal presided over by Gita Mittal, J. but he had not orally deposed. He has stated that it is incorrect to suggest that the material seized has not been published or produced by SIMI and pointed out that annexures at page Nos. 28, 29, 30, and 31 were statements of two independent witnesses, who had stated that accused were connected with SIMI and reference can also be made to the statements at page Nos. 40 to 44 and 50 to 65. He further stated that before conducting the searches he did not obtain search warrant and volunteered that the searches were emergent and were required to be conducted immediately.

192. He has stated that before being appointed as Deputy S.P. Market, Sub-division Belgaon, he was working as a Deputy SP, State Intelligence Division, Bijapur and he took over investigation of this case on 18th August, 2008. He has stated that as Deputy SP, Market, Sub-division Belgaon, he had jurisdiction over P.S. APMC. He also stated that the Belgaon city was divided into two divisions and he had jurisdiction over one division. He has stated that he had not investigated Crime No.88/2008 but had arrested two of the absconding accused and had recorded voluntary statements of the two accused in the said case. He has stated that it was correct that the accused No.1, Liyaqat Ali Sayyad in Cr. No.104/2008 P.S. Market Sub-division Belgaon was an accused in Cr. No.88/2008 P.S. APMC and that Nasir, who was an accused in Cr. No.104/2008, was initially arrested in Cr.No.88/2008. He has further stated that it was incorrect to suggest that basis of complaint in Cr. No.104/2008 was similar to the complaint in Cr.No.88/2008.

193. He has denied the suggestion that the first portion of the complaint nos. Cr. No.104/2008 and 88/2008 which has been filed with the affidavit of Mr. V.A. Pujar were identical or similar. He has also stated that all the seven accused in Cr.No.108/2008 are also the accused in Cr.No. 88/2008 but it was incorrect to suggest that Cr.No. 88/2008 was registered so as to have multiple FIRs for the same crime against SIMI and in Cr.No. 88/2008 no additional evidence was added to show as if they are two separate crimes.

194. He has admitted that the statements of the two witnesses (Exhb. PW-47/A-8 and A-9) are identical except for the personal details and volunteered that the statement was recorded faithfully by the Investigating Officer and whatever was stated by the witnesses was recorded truly by the Investigating Officer. Both the witnesses were neighbours and they have stated about the same issue and subject-matter. He has denied that the seizure memos (Exhb. PW-47/A-12 and A-13) of these two witnesses were same and volunteered that the witnesses to the two seizure memos were different. He has denied that the statements and seizure memos have been fabricated and that no statements (Exhb. PW-47/A-8 and A-9) were made and no materials *vide* pachanama (Exhb. PW-47/A-12 and A-13) were recovered. He has denied the suggestion that the two statements (Exhb.PW-47/A-10 and A-11) were identical and stated that there were made by two witnesses i.e. Mr. Madan Vilas Barle and Mr. Yeshwant Bhimanna Tanikar.

195. He has further stated that the witnesses Mr. Madan Vilas Barle and Mr. Yeshwant Bhimanna Tanikar are Hindus and the said witnesses had stated what they had seen inside the Mosque but had not heard. However, they had heard the conspirators outside the Mosque and mentioned about the same. He has denied the suggestion that during police custody Liyakat Ali Sayyed was tortured and made to sign all papers and documents or that the so called voluntary confessional statements of Liyakat Ali Sayyed have been procured illegally and that alleged incriminating material has been planted or that Cr. No. 88/2008 has also been registered on fabricated material.

196. He has denied the suggestion that the statements of two accused Imtiaz Izaz Dalayat and Tanveer Abdul Sattar Mulla (Exhbs. PW-47/A-10 and A-17), were identical except for personal details and has stated that the translations of the statements had been done by him and were correct translations. He has further denied the suggestion that he had not enclosed materials seized at the time of search because there was nothing incriminating in the seized material. He has also denied the suggestion that he had no personal knowledge about investigation against Liyakat Ali Sayyed, accused No.1 and has stated that he had not got recorded any statement of the accused u/s 164 Cr.P.C. He has denied suggestion that statements of the accused recorded by him are concocted and are not voluntary statements and he had verified from the independent documentary sources that the accused were members of SIMI. He has stated that he had not filed the said independent documentary source but the accused were attending SIMI meetings. He has informed that the case No.104/2008 is pending trial and he was not aware of the stage of trial as he was no longer the Investigating Officer of the said case. He has stated that he had applied for sanction from the appropriate authority for filing charge sheet u/s 10 and 13 of the Act.

197. He has stated that there are seven accused in Cr. No.104/2008, their names and details were mentioned on page Nos. 3 and 4 of his affidavit along with dates of their arrest. He has further stated that accused Liaqat Abdul Gani Sayyed was first sent to police custody by the Court on 15th May, 2008, and was sent to judicial custody for the first time by the order of the Magistrate 27th May, 2008; police custody was extended on 17th May, 2008, and 23rd May, 2008. He has also stated that accused No.2, Shaukat Ali Jakati was not taken into the police custody in this case but was arrested on body warrant. He has also stated that accused Nos. 3, 5, 6 and 7 - Imtiaz Abdul Izaz Dalayat, Tanveer Mulla, Nasir Liyakath Ali Patel and Nadeem Abdul Naeem Sayyed were taken into police custody for the first time on 7th August, 2008 and were sent to Judicial Custody on 8th August, 2008 and accused No.4, Dr. Munroj Uz-Jama Jamat was taken into police custody on 8th September, 2008 and was sent into judicial custody by the magistrate on 10th September, 2008, when he was produced before the Court. He has stated that after accused were sent into the judicial custody they were not remanded back to police custody and the statements of the accused persons relied upon by him were recorded while they were in police custody. He has stated that they had full power under the law to record statement and he did not know whether the said seven accused were taken into police custody in some other case.

198. Charge-sheets (Exhbs. PW47/A-12 & A-13) state that accused No. 4-Imtiyaz became an accomplice and was fully aware of the acts and objectives of the conspiracy of all accused and had physically participated in the unlawful activities of the SIMI activists.

Mr. V.A. Pujar (PW48), ACP, Devaraja Sub Division, Mysore, Karnataka

199. He has stated that on 27th May, 2008, the police visited the house of Nasir on the basis of credible information, conducted a search and seized a hard disc, books, computer, cables, bag etc. He has stated that the details of the hard disc were retrieved with the help of a computer expert and were found to be provocative in nature, intending to cause alarm and incite the Muslim community. It also contained provocative speeches of Osama bin Laden. He has stated that it contained the procedure of preparation of various types of bombs using different chemicals (glycerin, nitric acid, etc.) and literature regarding activities of Al-Qaida etc. He has stated that during questioning, Nasir had stated that he is a SIMI activist and revealed the names of 9 other accused persons involved in similar unlawful activities and were also linked with SIMI. He has stated that a suo motu case being C.R. No.88/2008 under Sections 153A, 153B, 124A IPC and under Sections 15 and 18 of the Act was registered against the ten accused persons. He has stated that the accused Nasir showed to them the house where the conspiracy meetings were held and where the accused used to screen provocative pictures relating to atrocities on Muslims. ..

200. He has further stated that accused No. 4-Imtiyaz Dalayat was arrested on 28th May, 2008 and on the basis of his voluntary statement a clock, electronic and other articles used to prepare bomb were seized from his pan shop. He has stated that on the same day, accused No.5-Nadim Abdul Nayeem Syed was also arrested and admitted that he was an Ameer (head) of SIMI. At his statement, his house was searched and a bottle of Glycerol, a white plastic bottle, a white old carry bag with broken pieces of bottle soaked with fluid and a white carry bag soaked in fluids alleged to be used for preparing crude bombs, etc. were seized. He has further stated that accused No. 10-Liyakat Ali was Abdul Gani was arrested on 9th June, 2008 and he had revealed that he is a SIMI activist and along with others had seen provocative scenes of atrocities on Muslims on the laptop and the method to make bombs to take revenge against the Hindus. He has stated that accused No. 10-Liyakat Ali showed them the houses where the conspiracy meetings were held. He has further stated that accused no.2-Izaz Gulam Hussain Khan was arrested on 4th July, 2008; accused No. 6-Thanvir Mulla had been arrested on 2nd August, 2008 and he had revealed that he was a SIMI member and along with other SIMI activists had prepared to execute bomb blasts in Tilakwadi area in Belgaum on the State Assembly election day and pursuant to his statement, three

CDs and a cylinder were seized from his place. He also stated that accused No. 7-Iqbal Ahmed was arrested on 4th August, 2008 who disclosed that he was the Ameer (Head) of SIMI in Belgaum. He stated that accused No. 8-Dr. Munroj Uz Jama was a key accused in this case, his presence was secured-on body warrant dated 26th September, 2008 and he had revealed involvement of all accused who were members of SIMI. He further stated that presence of accused No. 9-Mohamed Asif D, was secured on body warrant dated 27th September, 2008. He has stated that accused No. 3 and 11 were absconding while the remaining accused were in judicial custody. He has further stated that accused No. 11-Naseer was arrested on 27th October, 2008 and he produced a Nokia 1100, IMEI No. 35569200/051697/6 with SIM card No. 98440 82415. He has also stated that accused No. 15-Naveen was arrested on 27th October, 2008 and he had produced a passport and a Nokia handset during his voluntary statement.

201. In his cross examination, Mr. V.A. Pujar (PW-48) has stated that he had deposed about the case No.88/2008 P.S. APMC, Belgaon before the earlier Tribunal. He did not get statement of the accused recorded u/s 164 Cr.P.C. He has stated that the accused No.1, Nasir S/o Liaqat Ali Patel was also an accused in the case No.104/2008 PS Belgaon City. He has denied that the accused No.1, Nasir was first arrested in the case No.104/2008 and volunteered that he was first arrested in case No. 88/2008. He has stated that seven of the accused persons in FIR No.88/2008 were also the accused in the FIR No.104/2008 but denied that FIR No. 88/2008 was registered on the information furnished by the police investigating the FIR No.104/2008 or that FIR No.88/2008 was registered to have multiple cases against the accused. He has stated that Mr. V.V. Kumbar was not his superior officer in the present case, Mr. V.V. Kumbar had also investigated the present case; after he was transferred. Mr. V.V. Kumbar had become head of the said division and in that capacity Mr. V. V. Kumbar had investigated. He has denied the suggestion that the seizure inmemos are fabricated and no such seizures were made.

202. The statements (Exhb. PW-48/A-15, Exhb. PW-48/A-16 and Exhb. PW-48/A-17) have been correctly recorded and state what was stated by the witnesses and denied the suggestion that the fact that the statements were identical show, that they had been fabricated.

203. He has given details of when the accused had remained in Police custody.

204. He has further stated that out of the eight alleged confessional statements the statement of accused No.1, Mr. Nasir dated 28th May, 2008 was recorded after his arrest, when he was in judicial custody. He has stated that he had taken sanction for prosecution of the accused u/s 10 and 13 of the Act from the State Government but copy of the sanction was not attached with his affidavit. He has confirmed that the panch witnesses for the said four seizure memos are the same persons. He has denied that the panch witnesses in Exhb. PW-48/A-4, 11, 13, 14, 19, 21 and 22 were common. He has further denied that the witnesses to the panchamas were stock police witnesses and they were used to fabricate records/ recoveries.

205. Testimony of PW-48 has extensively referred to the recoveries made on search and on the basis of disclosure statements. The recoveries include inflammatory and provocative material for raising communal passions and exhorting persons to resort to violence. Material also includes method for preparation and use of RDX explosives, biological and chemical warfare. The chargesheet further states that many of the accused were members of SIMI and were actively propagating ideology and objectives of SIMI.

Mr. H. M. Omkariah (PW-49), Assistant Commissioner of Police, Sheshadripurum Sub-Division, Bangalore

206. He has stated that on 25th July, 2008 a series of bomb blasts had occurred in Bangalore and investigation of cases was entrusted on him. He has further stated that during the course of investigation, the involvement of SIMI activists, has come to light. The details of cases/FIRs are as under :

Madivala P.S. Cr. No. 483/08, 1ST ACMM Court C. C No. 23444/08

On 25th July, 2008 at 1.20 pm, PI Madivala P.S. received information that an explosion took place at a bus stop near Madivala check post on Hosur Road. On reaching the spot, PI Madivala P.S. noticed six persons who were badly injured. PI Madivala P.S. also learnt that similar bomb blasts were reported in other parts of Bangalore within a span of one hour. PI Madivala P.S. registered a suo moto case in Cr. No. 483/08.

Adugodi PS Cr. No. 217/08, 1ST ACMM Court, C. C No. 11803/09

On 25th July, 2008 at 1.30 pm, PI Adugodi P.S. received information that an explosion took place on footpath on Hosur-Laskar Road near Adugodi textile bank. On reaching the spot, PI Adugodi P.S. noticed a person who was badly injured. PI Adugodi P.S. also learnt that similar bomb blasts were reported in other parts of Bangalore within a span of one hour. PI Adugodi PS registered a case in Cr. No. 217/08.

Koramangala P.S. Cr. No. 297/08, 1st ACMM C.C No. 11134/09

On 26th July, 2008 at 11 am, PI, Koramangala P.S. received an information that an unexploded live bomb was lying near a shop. On reaching the spot he noticed a flower pot containing a bomb attached with wires. Accordingly a BDDS squad visited the spot and diffused the bomb. PI, Koramangala P.S. registered a case Cr. No. 297/08.

Ashoknagar P.S. Cr. No. 260/08, 1ST ACMM Court C. C No. 12270/09

On 25th July, 2008 at 2.10 pm, one Vasudev Pujari filed a complaint with the police to the effect that on 25th July, 2008 at 1.30 pm there was a big explosion near Adugodi drainage located nearer to his hotel, which caused injuries to two persons. Therefore Ashoknagar Police registered a case in Cr. No. 260/08.

Ashokanagar P.S. Cr. No. 261/08, 1ST ACMM Court C. C No. 12271/09

On 25th July, 2008 at 2.20 pm, one Sri. Sandeep Ged filed a complaint with the police to the effect that on 25th July, 2008 between 1.30 p.m. to 1.40 p.m. there was an explosion in front of his shop i.e. in the middle of the flower pots kept in front of his shop. Therefore Ashoknagar Police registered a case in Cr. No. 261/08.

Sampangiramanagar P.S. Cr. No. 92/08, 1ST ACMM Court C. C No. 12272/09

On 25th July, 2008 at about 3.00 pm, one Sri Ravindran Kanakraj filed a complaint with the police that near Rajarama Mohan Ray Circle, there was a big explosion which has caused injuries to him and to other persons. Therefore Sampangiramanagar Police registered a case in Cr. No. 92/08.

Bytarayanapura P.S. Cr. No. 314/08, 1ST ACMM Court C. C No. 11729/09

on 25th July, 2008 at about 1.50 pm, PI, Bytarayanapura PS, received an information that an explosion took place in front of Papanna Building, Pantharapalya, Mysore Road. On reaching the spot he noticed stone slabs which covered the drainage in front of Papanna Building were broken due to the explosion. Therefore Bytarayanapura P.S. registered a case in Cr. No. 314/08.

Bytarayanapura P.S. Cr. No. 315/08, 1ST ACMM Court C. C No. 11782/09

On 25th July, 2008 at about 1.40 pm, one Shri. Mahaveer Mehta, while he was riding his Honda Activa near premier irrigation office on Mysore Road, heard a blast and a bolt like thing hit his helmet and damaged its glass. He parked his two wheeler and went near the transformer in front of the said office and informed the Police. Accordingly, PSI Shri Manjunatha, Bytarayanapura P.S. registered a case in Cr. No. 315/08.

Kengeri PS Cr. No. 177/08, 1ST ACMM Court C.C No. 11799/09

On 25th July, 2008 at about 1.00 pm one Shri R. Vinayprasad stated that he has heard a loud blast sound in the corner of Concorde Motors, Mysore Road. He further stated that he initially took it to be tyre burst but later he noticed smoke coming out and then he realized it to be a bomb blast. He therefore requested Police for necessary action. Accordingly PI, Kengeri P.S. registered a case in Cr. No. 177/08.

207. Mr. H. M. Omkariah, ACP has stated that all these cases were later transferred to Central Crime Branch, Bangalore city.

208. He has further stated that all the accused persons were identified by the witnesses and were active members of SIMI and due to the ban, they had associated themselves with another outfit called as "Indian Mujahideen" to carry out their terrorist activities. He has further stated that investigation has also revealed that SIMI/its activists were operating in the name of organizations like Khizentul Kutubul Islamia, Wahadat-e-Islami and Ansarullah.

209. He has further stated that accused-Abdul Madani started Islamic Seva Sangh (I.S.S.) at Kerala and organized public gatherings. In those gatherings he delivered provocative speeches against Hinduism, about Godhra and the Babri Masjid issue. Another accused namely, Abdul Naseer inspired by the speeches became his follower. Accused Abdul Madani gave certain books to accused-Abdul Naseer to read and follow them and therefore the latter under the influence of the books started an organization called as "Sil-Sila-Noorlisha-Tharikath" with the help of other co-accused. Accused No. 3-Sarfaraz Nawaz was a top most/key SIMI activist.

210. He has stated that in the year 2005 the said accused had conspired to engineer the bomb blasts in Bengaluru and in furtherance of this conspiracy they had arranged for assistance and organized training camps in order to carry out Jihad activities. He further stated that in furtherance of this conspiracy the accused No. 3-Sarfaraz Nawaz had conducted a survey of the city of Bengaluru in the year 2008 and selected the locations to plant the bombs. He has stated that they had committed theft of explosive substances and conducted secret meetings and motivated the other said accused to get involved in Jihadi activities. He also stated that the accused had collected and stocked explosive substances in the house of accused No. 5 before transporting the material to other locations. Accused No. 14 was sent to Pakistan on forged documents for training. He stated that further meetings were held between 22nd June, 2008 to 25th June, 2008 at Aishwarya Tourist Home, Kerala to prepare advanced timer and micro chips to conduct serial bomb blasts at various parts of India including Bengaluru. He further stated that in furtherance of the said conspiracy and in order to execute serial bomb blasts in Bengaluru city accused No. 12-Abdul Raheem had obtained a house at Bommasandra, Bengaluru on rent basis to carry out unlawful activities and to achieve the objective of the conspiracy. He has further stated that during the course of investigation it was revealed that the accused assembled explosives in the house of Accused No. 7-P. Mujeeb and made live bombs, loaded them in a car and planted one live bomb at the Bus Stop near residential quarters of St. John's Hospital, Bengaluru on 24th July, 2008 between 03.30 a.m. to 06.30 a.m.; later on 25th July, 2008 at 1.20 p.m. the bomb exploded resulting in death of one, injuries to five, damages and caused loss of public property. He further stated that similar bomb blasts took place within a span of about one hour in Kormangala, Adugodi, Ashok Nagar, Sampangiramanagara,

Byatarayanapura and Kengeri police station limits in Bengaluru city. He has stated that accused No. 4-Sarafuddin had voluntarily and wilfully deleted the data stored in the hard disc of the computer kept in his shop situated at Kondatty and damaged the hardware used for committing bomb blasts thereby causing disappearance of evidence. He further stated that the accused No. 1-T. Naseer fled the country with the aid of accused no.3-Sarfraz Khan, accused No. 22-Wali, accused No. 23-Ali and accused No. 25-Saleem after the execution of the bomb blasts. Accused No. 1- T. Naseer, accused No. 19-Safaz, accused No.27-Sarafuddin, accused No. 28-Thajuddin, accused No. 29-Abdul Khadar, accused No. 30-P.B. Saabeer were arrested. He has stated that voluntary information was provided by accused no.1-Naseer.

211. In his cross-examination he has stated that he had filed the charge sheet in the said cases but charge is yet to be framed and the statements of accused had not been recorded u/s 164 Cr.P.C..He has stated that it was incorrect to state that alleged confessional statements (Exhb.PW-49/A-10) were concocted and were not given by the accused or to suggest in the alternative that the statements (Exhb.PW-49/A-10) had been taken under force, coercion and threat. He has denied the suggestion that statements of witnesses were identical except for minor variation/differences and he had faithfully recorded the said statements; it was incorrect to suggest that statements of witnesses had been fabricated.

212. Exhb. PW49/A-13 was described by PW49 as a calendar or a diary maintained by accused no. 14- Fiaz. PW49 was extensively cross-examined on Exhb.PW49/A-13. The said calendar/diary is hand written in Malayalam language. Mr. H.M Omkariah (PW49) has stated that he had asked Mr. Suresh Kumar the panch witness and father of accused no.14- Mr.Abdul Rahman who had confirmed that this was an appointment diary/calendar and their statements have been filed before the criminal court. It was put to the witness that Exhb.PW49/A-13 contains statements about Islamic practices in Quran and other texts and 99 names of Allah or Prophet Mohammad in Malayalam and Arabic. The witness had stated that he does not know Malayalam. The said document has been translated and as per the translation the contention of Mr. Ashok Aggarwal, advocate is apparently correct. However, the said document (Exhb.PW49/A-13) also has a sticker of SIMI with the words "Ayodhya to Jerusalem the jihad will go on" and two masjids can be seen in the background and there are words written in Urdu also.

213. He has stated that the statements in annexure J to M (Exhb.PW-49/A-10) were recorded under Cr.P.C. when the accused were in police custody. He has stated that after recording of the statements, the accused remained in police custody for the purpose of recovery etc. He has stated that copy of the books and CDs have been filed before the Court and it was incorrect to suggest that he had not filed copy of books and CDs before the Tribunal because there were nothing incriminating in the said books and CDs or that the said material did not show connection of accused with SIMI. He stated that list of members of SIMI has not been mentioned in the books or CD seized by him. He further stated that there was evidence of the witnesses as well as the documentary evidence to prove and establish that the accused were all members of SIMI and the documentary evidence is in form of Exhb.PW-49/A-13 along with the voluntary statements of the accused. He stated that Exhb.PW-49/A-13 was the only document to connect the accused with SIMI. He has stated that during the course of investigation and inquiries and on the basis of statements of witnesses, he came to the conclusion that IM was a front organization of SIMI. He volunteered that he had filed the said statements (Exhb.PW-49/A-12) before the Tribunal.

214. He stated that averments made in page 7 of his affidavit at point A, wherein he has mentioned the names of organizations like Khizentul Kutubul Islamia, Wahadat-e-Islami and Ansarullah were based upon his personal knowledge and on the basis of investigation and inquiries made by him. He has stated that he had not visited the office of the said organizations and that he was not aware whether the said organizations were registered or who were the office bearers of these organizations. He stated that he did not have copy of the list of members of these organizations. He stated that his personal knowledge was based upon his inquiries, meetings with his seniors and interactions with police officers. He stated that he had visited the office of Sil-Sila-Noorlisha-Tharikanth and investigated this organization. He stated that this organization was started by accused No.1 in Thail of Kannur City in 1996 but he was not aware whether a branch office was started in Thail or the organization itself come into existence. He has stated that he had only visited Thail office of the said organization and as far as he was aware this organization was wound up by the accused persons after their arrest without any legal formalities being completed for winding up. The door of the building from where the organization was functioning was closed. He has stated that he was not aware whether Sil-Sila-Noorlisha-Tharikanth was an existing religious organization in 1977, i.e. the year, when SIMI was started or whether this organization was banned. He has stated that he had not charge sheeted Mohd. Ali, Javed Ali, Noushad and Abubakar as accused. On being asked whether he had filed a 'B report', he stated that initially, he had conducted the investigation and did not find these four persons involved in his case.

215. I am not inclined to disregard the statements of Mr. H.M. Omkariah (PW49) on the ground that he had partly misunderstood the document (Exhb.PW49/A-13). PW49 does not know Malayalam. Anyone familiar with Malayalam would have known the answer which was obvious. Statement of witness with regard to the said document appears to be partly correct but this does not imply that the entire statement of PW49 should be ignored as untruthful and unreliable. It is difficult to believe that the sticker in the document (Exhb.PW49/A-13) was printed prior to 2001 but had remained with Fiaz till 2009. The sticker is of SIMI and there is no dispute about the said fact.

Mr. Jagadish Basalingappa Khot (PW-50), Deputy Superintendent of Police, Bijapur Sub Division, Karnataka

216. He has stated that he was conversant with the facts and circumstances of Crime No. 260/2008 as he was entrusted with the investigation of this case at Bijapur Golgumbaz P.S. On 4th December, 2008 PSI M.K. Dhamannavar and his staff found that some miscreants had pasted provocative pamphlets containing slogans such as "OUR STRUGGLE FOR FINAL & COMPLETE SUPREMACY OF ALLAH "INVOLVES BABRI MASJID TOO.....". He stated that the said pamphlets were seized and a suo motu complaint was filed by PSI M.K. Dhamannavar based on which Cr. No 260/2008 was registered against unknown persons. He further stated that during the course of investigation 15 accused persons were arrested.

217. He has stated that six accused were arrested on 19th December, 2008 along with Accused no.1-Shaan-e-Karim and approximately 70 handbills were seized from their houses while the following articles were seized from A1's home: a black Nokia 1600 mobile IMEI No. 356957/01/978506/03 and Spice SIM No. 9844240360, a chocolate coloured diary, 80 CDs containing provocative material against Hindu religion, a Samsung company flat computer monitor, key board, speaker 4.1 woofer, 1 mouse, UPS, a CPU-LG along with hard disc, CDs and 25 provocative handbills, one CPU with nothing on the hard disc, two Quran books.

218. Mr. J.B. Khot (PW-50) has also stated that the CDs that were seized from Shaan-e-Karim revealed provocative slogans such as : "Six feet of earth makes all men equal (IBT)" along with a map of America which shows demolition of New York building by an aeroplane, "Allah is our Lord. Mohammad is our commander. Quran is our Constitution. Jihad is our Path. Shahadat is our desire (IBT)", "Islam will dominate the world (IBT)", "The world is red by Muslim Blood", some pictures of the Gujarat incidents and the Malegaon incident in which pictures of the demolished Masjid and burning of Quran are shown. He has stated that investigations revealed that Shaan-e-Karim was a dental student, an active member of SIMI since 2000, had organized many functions for SIMI in Bijapur, many cases had been registered against him and he was Iqvan (Head) of SIMI in 2000-2001. He also stated that Shaan-e-Karim had continued his illegal activities for SIMI under the name of Student Islamic Movement (SIM) to escape the clutches of law. He further stated that during the course of investigation he had recorded the statement of Sri Channu who was working as watchman in Model Golgumbaz and the masjid building attached to it. He stated that Shri Channu had seen Shaan-e-Karim (accused no.1) come to the masjid along with 8-10 persons to conduct a meeting where he said that he had got printed some handbills which he wanted to exhibit at conspicuous places. He also stated that 3 other accused were arrested on 20th December, 2008 and these accused had burnt the provocative material they had as they came to know of the arrest of Shaan-e-Karim.

219. In his cross examination, he has stated that his entire affidavit is based upon annexure 13 (Exhb.PW-50/A-13) and has denied the suggestion that the document at page 56 has been downloaded from the internet. He has stated that he has brought the original with him. Some originals have been filed. They have not been down loaded from the internet. The posters read "our struggle for final and complete supremacy of Allahinvolves Babri Masjid too....". He has also stated that IBT stands for Islamic Book Treasurer which is a library in the house of accused no.1-Shaan-e-Karim at Bijapur. He has stated that he was not aware whether this library was at other places also.

220. He has stated that in the document (Exhb.PW-50/A-13), it was not mentioned that the said document was published by SIMI or connected to SIMI but volunteered that the accused no.1-Shaan-e-Karim was a SIMI activist and this document was recovered from his residence and he was distributing similar documents and was creating hatred and disturbing harmony between Hindus and Muslims. He denied that A1 was a member of SIMI prior to 27th September, 2001 and stated that he was and still is a member of SIMI. Further Shaan-e-Karim in his statement, (Exhb.PW-50/A-11), had stated that he was a member of SIMI since 2000 and had not quit SIMI in 2001. He also stated that the other accused were connected with SIMI. He has stated that he was aware that 6th December is observed as a protest or a black day by many organizations. He has stated that the panch witness were from the locality.

221. He also stated that he was appointed as an Investigating Officer on 2nd January, 2009 and even prior to the said date, he was supervising the investigation and had examined the documents and papers. He stated that he was the Sub Divisional Police Officer and, therefore, investigation was conducted under his supervision. He also stated that voluntary statements (Exhb.PW-50/A-15 to A-18) of the accused were recorded when the said accused were in police custody but the same were not recorded u/s 164 Cr.P.C. He has stated that he had taken sanction for prosecution u/s 10 and 13 of the Act.

222. He has stated that on the basis of official records he had prepared a chart (Exhb.PW-50/D-2) about the date of arrest of the accused, dates or periods on which they had remained in police custody or were permitted to remain in police custody, the date on which they were transferred and remanded to judicial custody for the first time. He further stated that the accused No.1, Shaan-e-Karim was taken in police custody after the court order dated 9th January, 2009 and for interrogation on 10th January, 2009. Shaan-e-Karim remained in police custody till 15th January, 2009 and on that date itself was sent to judicial custody. He stated that he was aware that police of Gandhi Chowk P.S., Karnataka had taken police custody of the accused Shaan-e-Karim but he did not know the exact date. He has stated that voluntary statements were recorded when the accused were in police custody and not in judicial custody and the other accused were not taken into police custody after they were remanded to judicial custody.

Mr. S.S. Khot (PW-51), Dy. Superintendent of Police, Shiggaon Sub-Division, District Haveri, Karnataka

223. He has deposed that when he was working as the Deputy Superintendent of Police, Special Enquiry Squad—COD, Bangalore. On 30th January, 2008, a complaint was lodged vide Cr. No. 14/08, Gokul Road P.S., against the accused Mohammed Asif D for speeding a motorcycle and he did not have ownership papers. It was suspected that motorcycle was stolen. He has stated that the investigation of this case was handed over to him thereafter and during the course of investigation it was revealed that the said accused along with others was involved in the unlawful activities of SIMI. The role played by each arrested accused is as follows:—

Accused no.1-Mohd. Asif D. an active member of SIMI and participated in conspiracy meetings of SIMI activists was a medical student who along with Accused no.6-Alla Bhaksh and Accused no.7-Mirza Ahamed Baig had participated in conspiracy meetings aimed at Islamisation of the world by means of Jihad in April 2007. The accused had prepared hand grenades using gelatin sticks and detonators. He was found in possession of four revolvers and rounds. Two witnesses revealed that Mohd. Asif D. along with other arrested accused nos. 6 and 7 have deliberated to destroy the important installations in India, uproot Indian economy, etc.

Accused no.2-Raziauddin a SIMI activist had contacts with Arab countries and had visited Saudi Arabia in Aug 2005 and from there he went to Pakistan and got terror training with LeT and ISI for about one year. He also learnt handling various weapons such as AK-47, LMG, HMG, grenades, using IED and preparation of explosives. He had returned to India on a fake passport with Accused no.3-H.A. Asadulla to identify/ target places to explode bombs and was involved in committing theft of motorcycles to be used in bomb blasts.

Accused no.3-H.A. Asadulla participated in training camp organised by SIMI activists in December 2007 in Kerala had committed motorcycle thefts from various places along with Accused no.2-Raziauddin and had also purchased a Maruti car to be used in serial bomb blasts.

Accused no.4-Hafeez Hussain Mulla had provided financial assistance to purchase vehicle, wireless sets, air pistol etc. for the illegal activities of SIMI.

Accused no.5-Shakeel Ahamed, a SIMI member who participated in conspiracy meetings of SIMI at different places was also involved in committing theft of motorcycles to be used in terrorist activities. The motorcycles were seized from him.

Accused no.6-Alla Bhaksh a SIMI supporter had arranged for rented houses at Hubli city for SIMI activities and incriminating books were seized from him.

Accused no.7-Mirza Ahamed Baig was an accomplice of Accused no.1-Mohd. Asif D. and was also involved in purchase of Maruti car for SIMI activities.

Accused no.8-P.A. Shibly and most of his family members were SIMI activists.

Accused no.9-Yahya Iyash Kammukutti, at the time of his arrest had in his possession incriminating books, CDs, laptop and invitation pamphlets to attend SIMI meeting.

Accused no.10-Safdar Hussain Nagori, was General Secretary of all India SIMI in 2001 and was also a topmost SIMI functionary who had decided in a SIMI meeting to avenge the Babri Masjid Demolition, Gujarat Riots and the Krishna Commission Reports. He had also attended SIMI conspiracy meetings and training camps.

Accused no.12-Syed Sadiq Sameer Abdul had with him provocative literature in Urdu, Nokia mobile phone and a personal diary. He had attended SIMI conspiracy meetings.

Accused no.13-Kamruddin was a staunch follower of Accused no.10-Safdar Nagori and 7 country pistols and 45 rounds were seized from his possession.

Accused no.14-Mohd. Yasin was an active member of SIMI and pursuant to his statement a fake number plate of a Maruti Car was seized.

Accused no.15-Mohd. Ansar was a close follower of Accused no.8-P.A. Shibly and had participated actively in SIMI ideology meeting at Aluva and other conspiracy meetings.

Accused no.16-Dr. Munroz Zama had in his possession a country made pistol which was later given to Iqbal Jakati. It was revealed in course of the investigation that he is the key accused in the case No. 14/2008 and had organized conspiracy meetings in his house along with other co-accused.

Accused no.17-P.A. Shadoli had attended SIMI conspiracy meetings and training camps.

224. Mr. S.S. Khot (PW-51) has further stated that the accused had held conspiracy meetings of SIMI between April 2007 and December 2007 at various places where conspiracy was hatched to avenge and eradicate all non Islamic religions of the world through Jihad. In furtherance of their objectives, three two wheelers were stolen and one old maruti

car and a motorcycle were purchased. He has stated that accused no.2 was trained in Pakistan with the assistance of LeT and ISI. He was trained for handling weapons like AK-47, LMG, etc. and preparation of bombs using chemical substances. He has also deposed that in another case-Cr. No. 05/08 the accused Asadulla along with accused Raziuddin on 11th January, 2008 were caught under suspicious circumstances along with a stolen motor cycle, six fake number plates and two fake I.D. cards. Later on they revealed they were members of SIMI.

225. In his cross-examination he has stated that Sayyed Nayeem was not an accused in the charge sheet but his name finds mention in the sanction order Exhb.PW-51/D-1 and volunteered that in the sanction order itself it was mentioned that there was no evidence against Sayyed Nayeem and, therefore, his name, was left out from the charge sheet.

226. He has stated that the criminal case is now fixed for appearance of the accused on 17th July, 2010 but the statements of accused have not been recorded u/s 164 Cr.P.C. He has stated that he did not have a list of SIMI members and had not verified whether accused were shown as members of SIMI in any list.

227. He has stated that NARCO tests were conducted after taking permission of the Court but no consent in writing was taken from the accused. He has stated that he was aware that Dr. S. Malini, who had conducted the NARCO tests, has been suspended but was not aware whether she has been dismissed or whether she had submitted fake educational qualification certificates. I am not relying upon the NARCO test reports.

228. He has stated that the documents, books and records seized have been filed in the Court and they had not kept copy of the book at Serial No. 4 (Exhb.PW51/A-4). He has stated that the other materials seized were laptop, pen drive etc. He has stated that they did not keep copy or printout of the said laptop, pen drive etc. He has denied the allegation that he had not filed copy of the seized documents (Exhb.PW-51/A-4) as there was nothing incriminating or illegal in the said material. He has stated that he had sent books/documents which were seized for verification/translation as they were in Urdu and other languages and he had not received report till/when he was transferred. He has stated that book, which was seized, has details of publisher and author; he had not verified from author and publisher whether the book was banned. He has volunteered that he was conducting investigation on other aspects till he was transferred. He has stated that a booklet, namely, "Liberation of India through Islam" and the pamphlet "Nationalism or Khilafat" which were seized were both published and issued by SIMI. He has further stated that keeping of this material in 2008 was an offence and in this case the accused who were found with these two booklets, were also found instigating other youths to join SIMI and to be part of their activity. He has stated that he did not know the exact number of recoveries made in Cr.No 5/2008 as he was not the Investigating Officer in the said case.

229. He has stated that he has brought a chart (Exhb.PW-51/D-2) giving dates of arrest of the accused, the date on which the accused was produced before the Court for the first time after arrest, the periods during which the accused remained in police custody and the date on which the learned Trial Court for the first time had remanded the accused to judicial custody. He has stated that he was not aware whether police from any other police station had asked for and taken police custody of the accused after they were remanded to judicial custody. He stated that he did not remember whether he had taken separate permissions for sanction/prosecution under Cr.P.C. and u/s 10 and 13 of the Act. On being asked if he had the entire records of Cr. No. 5/2008 he had stated that he had copy of the FIR, some seizure panchnamas and some of the statements of accused in Cr. No.5/2008 and some other documents. He has stated that the file of Cr. No.5/2008 was clubbed with file of Cr.No. 14/2008. He has stated, on the basis of voluntary statement of accused Raziuddin (Exhb.PW-51/A-11) at page No.103, that the father of Raziuddin i.e. Mohd. Nasiruddin was arrested by Gujarat police in connection with assassination of Mr. Haren Pandya. He has stated that he was not aware whether Mohd. Nasiruddin has been acquitted of the case against him.

230. He has stated that the statement of Asadullah was recorded on 27th January, 2008 in Cr.No.5/2008 and in the said statement Asadullah had mentioned that he and his friend Asif used to keep Islamic fundamental and jihad books and used to read them and Raziuddin Nasir used to encourage them and used to state that he was a SIMI activist and he had contacts with Lashkar-e-Toiba (LeT) and DJS, Hyderabad and other organizations. He had also stated that he had gone to Pakistan for training.

231. He has stated that he did not know the total number of seizure memos in Cr.No.5/2008 and as per the records available with him the seizure memos had been signed by three witnesses, namely, Mr. Chandershekar, Mr. C.H.Nagappa and Mr. Anappa.

232. He has denied the suggestion that records and statements in Cr.No. 14/2008 have been fabricated to implicate SIMI and the accused or that the ban on SIMI was coming to an end in February 2008 and just before the ban was to expire, the case was fabricated. He has stated that he had not come across any application filed by Raziuddin Nasir in which he had stated that he had not made any voluntary statement before the police and has denied the allegation that there was no material except the so called voluntary statements to connect the accused to each other. He has further stated that he was not aware whether accused No.1, 5, 6, 12, 3, 7 and 9 have filed any applications before the Principal District and Session Judge, Dharwad stating that they have no connection with SIMI. He has stated that gelatin and other explosive material were recovered from the open place and volunteered that the material was hidden in the open place in the forest area and that gelatin is used for stone cutting in Karnataka.

233. It is clear from the statement that FIR no. 14/2008 P.S. Gokulroad was registered on 30th January, 2008 under Section 379 IPC r/w S. 41(1)(3) read with 102 Cr.P.C. as Mohd. Asif D. was unable to explain about ownership and produce documents of the motorcycle, he was driving. He had stated that his friend Asadullah and Mohd. Gauz know about the motorcycle and on search their photographs were also recovered from the Mohd. Asif. The motor vehicle was seized. Subsequent interrogation of Mohd. Asif revealed that he was involved with others in unlawful activities and was a member of SIMI.

234. FIR no. 14/2008 therefore cannot be rejected on the ground that the said FIR initially was not registered under the Act and there were no allegations about unlawful activity or SIMI in the said FIR. Asadullah and Mohd. Gauz @ Raziauddin were arrested on 11th January, 2008 in FIR No. 5/2008 registered at P.S. Honnali. They were arrested while driving a motorcycle without proper papers. On search one black bag was found with bunch of keys of other motor bikes, ID cards, knife, some money including dollars, etc. PW51 along with the affidavit has not filed FIR No. 5/2008 P.S. Honnali and other documents. Contention of Mr. Ashok Aggarwal, advocate is that this was deliberately done and is intentional. PW-51 has explained that he was not the Investigating Officer of FIR 5/2008 P.S. Honnali, though in his cross examination he has admitted that he had procured copy of seizure memos as they were relevant. The witness has stated that several motor cycles were stolen by the accused and the details are given at page 46 of this affidavit. Contention of Mr. Ashok Aggarwal, advocate was that this is factually incorrect and wrong. The charge sheet does mention about the seizure of motor cycles in column nos. 1, 11, 14, etc. Moreover no such suggestion was given to PW-51. This question should have been put to the witness to enable him to answer the same.

235. Subsequently, FIR No. 5/2008 P.S. Honnali was clubbed with FIR No. 14/2008 P.S. Hubli and a chargesheet was filed by the Investigating Officer-Subash Chandra. This was done after PW-51 was no longer the Investigating Officer in the said case.

236. It was submitted that FIR No. 14/2008 was false as the accused was later on able to submit ownership papers. As per the FIR no. 14/2008 at the time when the motor cycle was stopped, the accused was not able to produce ownership papers. Therefore, at that time, the FIR was rightly registered as per the averments made therein. There is recovery of incriminating materials from the accused.

ANDHRA PRADESH

S. Srinivas Rao (PW-52), Inspector of Police, P.S. Octopus, Hyderabad, Andhra Pradesh

237. PW-52 has stated that SIMI was formed at Aligarh, U.P. on 25th April, 1977. Professor Mohammad Ahmadullah Siddiqi was the founding President of the outfit. He has stated that objectives of SIMI are : (1) governing human life on the basis of Quran, (2) propagating Islam, (3) Jehad for the cause of Islam, (4) destruction of nationalism and establishment of Islamic rule. He has further stated that organisation believe that (1) Allah is our lord, (2) Rasool is our commander, (3) Quran is our holy book, (4) Jehad is our path, (5) Shahadat is our desire. This organisation is working for an international Islamic Order, publishing and circulating posters and literatures, which were designed to incite communal feelings.

238. He has stated that reports have been received from Spl. Branch, Hyderabad and other agencies which in his opinion were secret and confidential and shall be produced before this Tribunal. He has further stated that enquiry was conducted and it was revealed that there were several sympathizers and activists of SIMI in Hyderabad. He has stated that SIMI activists have joined various other organisations like D.J.S, T.T.S.I. and Indian Mujahideen in order to hide their identity. Their individual testimonies and other aspects are being discussed below.

239. He has stated that in view of the second anniversary of Mecca Masjid Bomb blast, on 18th May, 2009 police personnel were placed on picket duty when Tahreek Galba-e-Islam Organization attacked the picket, opened fire and injured two police personnel and ran away. Accordingly, CR.No. 2/2009 was registered.

240. CR.No. 01/2009, P.S. Octopus, was registered on 3rd December, 2008, when accused Vikar Ahmed @ Viqaruddin opened fire on the police party and simultaneously one of his accomplices also opened fire. Guru Rama Raju, Head Constable got injured. Vikar Ahmed @ Viqaruddin was caught but in the scuffle managed to escape but police snatched pistol of Vikar Ahmed @ Viqaruddin from his hands. He has stated that the weapon which the accused were carrying was used to commit crime in the case of CR.No. 157/2009, P.S. Falaknuma and CR.No. 87/2010, P.S. Hussain Alam.

241. The ballistic expert after examining the rounds seized in both cases observed that they were of similar elemental composition and as per the scrape marks, chamber marks were present on the bullets and cartridges.

242. Accused Vikar Ahmed @ Viqaruddin was a close associate of Moutasim Billa, brother of Late Mujahed Saleem-a SIMI activist and an active member of Jamait-e-Islami and he was also close associate of Baleequaddin, T.S.S.I. President and also accused in Haren Pandyan murder case. He has further stated that in May, 2007 Safdar Nagori visited Hyderabad and stayed in the house of Abdul Aleem Islahi. He has stated that accused Vikar Ahmed @ Viqaruddin gave a hard disk to Jaber, Yaser and Moutasim Billa, accused in Gopalapuram case, which was handed over to Safdar Nagori.

243. He has stated that the accused-Vikar Ahmed @ Viqaruddin has many friends of Jihadi mentality and they incited communal feelings and carried out disruptive activities in Hyderabad effecting communal harmony. He has further stated that even after the imposition of ban, the activists of SIMI were continuing to propagate their ideology and activities.

244. In his cross examination, he has stated that he had become the Investigating Officer of the FIR No. 157/2007 (Exhb.PW-52/A-1) on 22nd June, 2009. Prior to 22nd June, 2009, Inspector, Police Station, Falaknuma was the Investigating Officer of the FIR (Exhb. PW-52/A-1) and later on investigation was transferred to special investigation team. Special investigation team is not part of P.S. Octopus. He has stated that he had read the case diary of the investigations conducted by the earlier Investigating Officer but had not enclosed the entire copy of the police file/record with his affidavit. He has stated that a cartridge casing of the bullet falls out from a pistol when it is fired. He has denied the suggestion that the FSL report (Exhb.PW-52/A-7) does not corroborate that the cartridge and the bullet used were not from the seized pistol.

245. He has stated that he was not aware whether the cartridges/bullets were hand-made or standardized factory made or whether factory manufactured bullets have the same elemental composition for every batch. He has denied that observations made at page 47 (Exhb. PW-52/A-7) in the FSL report merely refers to the marks caused by the firing pin and the barrel marks but do not relate to the mark caused by a specific/particular weapon and do not indicate that a specific/particular weapon was used. He has denied the suggestion that there was no connection between Case No. 1/2009 and Case No. 2/2009 of P.S. Octopus and has stated that the FSL report shows that the two cases were inter-connected. He has stated that no one has been arrested in case No. 2/2009.

246. In support of the averments made in para 7 of his affidavit that accused were members of SIMI, he has stated that one of the evidence is the confessional statements (Exhb.PW-52/A-8). Other than these confessional statements there was no other material. He has stated that these two confessional statements (Exhb. PW-52/A-8) were recorded prior to registration of FIR No. 2/2009, P.S. Octopus. He has stated that he had not recorded these statements or witnessed the said statements. He has denied the suggestion that there was no connection between his case and the case in which the confessional statements (Exhb.PW-52/A-8) were recorded. He has stated that the secret material referred to in paragraph 4 of his affidavit, which has come from various inputs, would be produced before the Tribunal by the Nodal Officer. He was relying upon the same.

247. He has stated that DJS and TTSI have not been banned and have been in existence for many years. He has denied the suggestion that averments made in paragraphs 8 and 9 of his affidavit about SIMI were without any basis and were incorrect. He has stated that he was not the Investigating Officer in Crime No. 87/2010, P.S. Husain Alam but had been involved in the investigation of the said case as he had sent information that the same accused were involved in the said cases. He has denied the suggestion that FSL report has not been received in Crime No. 87/2010 and volunteered that he was aware that FSL report has been received in Crime No. 87/2010.

Mr. P. Devender (PW-53), Inspector of Police, P.S. Saidabad, Hyderabad :

248. He has stated that on 5th March, 2008, absconding accused- Moutasim Billa, associate of SIMI activist-Mr. Yasar was arrested near his house in CR.No. 198/2007, P.S. Gopalapuram. After sometime lady family members and active member of SIMI women wing under the leadership of Ms. Huma Islahi, alongwith Tasneem Fatima, SIMI sympathizer formed themselves into an unlawful assembly and attacked the said Police Station. Four police persons were injured and damage was caused to Government property. CR. No. 73/2008 was registered and 22 ladies were arrested. Case is pending trial.

249. He has stated that this was a rare case in India where SIMI militant activists organized their lady activists and attacked the police. SIMI continues to work covertly and their cadre is active and exists in Hyderabad city.

250. Words on the posters published by SIMI support PAN Islamic Fundamentalism, use derogatory languages for other religions and exhorted Muslims in the name of Jihad. He stated that even after the ban, SIMI is operating under various frontal organisations like Tanzim Islahul Muslimeen, Inter Services Intelligence, Laskar-E-Toiba, I.M.M.M., Al-Umma, Darsgah-E-Jehad-O-Shahadat, Jamait-E-Islamic-Hind, Islami Dawath Mission etc.

251. In his cross examination, he has stated that charge has been framed and the case is fixed for trial. He has further stated that he is aware that his predecessor had filed an affidavit before the earlier Tribunal in respect of this case. He has stated that as per the official records, accused were members of SIMI. Again said that the investigation records of this case do not state that the accused were members of SIMI. He has stated that there was no such information in the official records of this case to support the averments made in paragraph 1 of his affidavit at point 'A to A'. Voluntarily stated that this averment is as per his knowledge while working in the Department and as per intelligence sources of the police..

252. FIR No. 73/2008 was registered after some ladies attacked police station and damaged the same and indulged in stone throwing. The FIR shows that it was not registered under the Act. The charge sheet was also not filed under the Act. During cross-examination, Mr. P.Devender (PW-53) admitted that there was no material on record connecting this case to SIMI. It is however stated that Ms. Zile Huma is sister of Moutasim Billa, who is a SIMI activist and she is an active member of SIMI woman wing. It is further stated that on 5th March, 2008, one Mr. Yasar, a SIMI activist and a close associate of Moutasim Billa was arrested and therefore the protest was organized. These facts are not mentioned in the FIR or in the charge sheet. These are not part of the official records. In these circumstances, I am not relying upon evidence of PW-53.

Mr. S. John Wesley (PW-54), Inspector, P.S. Octopus, Hyderabad, Andhra Pradesh

253. On 3rd December, 2008, Mohd. Jaffer, Head Constable (HC) made a statement before Shri Srinivas Rao, SI, stating that he along with D. Kashim had kept a discreet watch on a suspect- Vikar Ahmed @ Viqaruddin. Suspect Vikar Ahmed came out from V.V.R. Communication located in I.S. Sadan X Road after making a phone call. Surveillance team tried to catch him but Vikar Ahmed opened fire on the police party simultaneously with one of his accomplices, as a result of which Guru Rama Raju, HC sustained bullet injury in his stomach. Mohd. Jaffer, HC caught hold of the pistol of Vikar Ahmed and snatched it from his hands. In the meantime, suspects' associates came in support of Vikar Ahmed and took him on the motorcycle and escaped towards Champapet side. Injured constables were shifted to hospital.

254. He has stated that in this case the accused Vikar Ahmed was a close associate of Moutasim Billa, brother of Late Mujahid Saleem-a SIMI activist and active member of Jamait-e-Islami and he was also a close associate of Baleequaddin, T.S.S.I. President and an accused in the Haren Pandyan murder case. In May, 2007, Safdar Nagori had visited Hyderabad and stayed in the house of Abdul Aleem Islahi. He has stated that accused Vikar Ahmed gave a hard disk to Jaber, Yaser and Moutasim Billa, accused in Gopalapuram case, which was handed over to Safdar Nagori.

255. He has stated that accused Vikar Ahmed @ Viqaruddin has many friends of Jihadi mentality and they used to incite communal feelings and carried out disruptive activities in Hyderabad effecting communal harmony. He has further stated that even after the imposition of ban, the activists of SIMI were continuing to propagate their ideology and activities.

256. In his cross examination, he has denied the suggestion that there is no basis or material to make statements against SIMI in paragraph Nos. 2, 5, 6 8 and 9 of his affidavit. He has stated that these averments have been made on the basis of intelligence reports that his Nodal Officer would file before the Tribunal.

257. He has stated that he became the Investigating Officer of Crime No.1/2009 on 16th June, 2009 after a part of the investigation was complete. He has stated that a pistol and not a revolver, was seized in the present case and was handed over by the complainant to the Investigating Officer; some cartridge casings were also seized from the scene of offence. He has denied the suggestion that FSL report does not connect the accused to the offence. He has stated that the FSL report refers to country made pistol used by Mr. Vikar Ahmad @ Vikaruddin, which was seized from him and gives opinion as this was one of the weapons used by the accused. He has stated that he has relied upon the confessional statements apart from his independent investigation and inquiries that reveal that the accused were members of SIMI. He has admitted that the confessional statements (Exhb. PW-54/A-8) were not recorded in Crime No.1/2009, P.S. Octopus and volunteered that they were recorded in Crime No. 198/2007, P.S. Gopalpuram. He has stated that the statements (Exhb. PW-54/A-8) were recorded prior to the date of the incident/occurrence, subject matter of FIR No.1/2009 but he had not recorded and was not a witness to the confessional statements. He has denied the suggestion that the statements (Exhb. PW-54/A-8) have no connection with his case and have been filed solely to prejudice the Tribunal. He has volunteered that these statements were by the accused, who are connected with his case.

K. Srinivasa Rao (PW-55), Inspector of Police, Special Investigation Team, Hyderabad City Police, Hyderabad, Andhra Pradesh.

258. He has stated that on 31st October, 2004, one Moulana Mohd. Naseruddin, President of T.T.S.I. was arrested by Gujarat Police. A non-bailable warrant was issued by POTA court, Ahmedabad in CR.No. 12/2003. He has stated that during execution of warrant, the followers of Moulana Mohd. Naseruddin protested and attacked police personnel and tried to take away the arrested accused. He has further stated that five accused were arrested and were produced on PT warrant.

259. He has stated that charge sheet has been filed against Moutasim Billa and Mohd. Shakeel on 29th May, 2008 and trial was yet to commence. Charge sheet was also filed on 3rd June, 2008 against Raziuddin Naser in Juvenile Court and trial was yet to commence. Similarly, against accused Muqeemuddin Yaser and Baleeghuddin Jaber charge sheet was filed on 9th December, 2009.

260. He has stated that accused-Moutasim Billa in CR.No. 882/2004 P.S. Saidabad, confessed on 18th March, 2008 and 29th April, 2008 that his father is the member of Jamat-e-Islami Hind and has actively participated in their programmes all over the India. Number of activists namely Zia Ur-Rehman of Aurangabad, Sajid Shehrai of Rajasthan, Dr. Anees of Lucknow, Safdar Nagori of Bhopal, Saheed Badar Falahi and Abdul Bashir of U.P. used to come and meet his father. When they would come to Delhi, he and his brother Mujahid Saleem used to meet them being the members of SIMI. Accused has further stated that one Ms. Ayesha and Ibrahim of Al Umma who were accused in Coimbatore blast in 1998 came to Hyderabad and his brother gave them shelter though he knew about the blast case. Due to the involvement of Salim Mujahid, SIMI activist, his father shifted him to Hiwandi in a secret place and his father spoke to Abdul Rehman's wife who is the sister of Sayeed Salahuddin, Ex SIMI, All India President Cadre. Since his brother's name did not figure in the charge sheet, they brought him to Hyderabad and he surrendered in Hyderabad. Accused-Moutasim Billa further stated that they went to Cuttack and met Meem Naseem, Murshad of one Masjid and gave him some pamphlets and from there they went to Jharkhand and thereafter to Patna and met Hasseb Raza, SIMI Zonal President and had lunch in his house. Confessional-cum-Seizure Panchanama of Mohd. Muqeemuddin @ Yasar was also recorded in CR.No. 198/07, P.S. Gopalpuram in which he has stated that his family, Moulana Abdul Aleem Islahi's family and Shaik Mahaboob's family were activists and

supporters of SIMI which advocates the liberation of India by converting it into Islamic Land and to establish Dar-ul-loom by converting everyone into Islam either forcibly or by violence. He also stated that after the ban of SIMI in January, 2001, (*sic, September, 2001) all the cadres of SIMI joined the TTSI.

261. On 1st November, 2004 the funeral procession of Mujahid Saleem, who was SIMI activist and was killed in firing by Gujarat Police, was in progress under the leadership of Shaikh Mahaboob Ali, President of D.J.S., activist of T.T.S.I. and SIMI consisting of about 2000 processionists, became violent and suddenly attacked the police party with iron rods and stones. They also tried to set fire to the police vehicle and due to this many vehicles were badly damaged. In this case, 13 accused were arrested and 21 were absconding. Charge sheet was filed on 28th May, 2008 and trial was yet to commence.

262. He has stated that confessional statement of accused Moutashim Billah which was recorded in CR.No. 41/2004, P.S. Saidabad in which he has stated that in the year 2006 during Ramzan, SIMI activist-Subhan came to Hyderabad to meet them and stayed at Ek Minar Masjid, he and Jaber went to Subhan and discussed about the funds of SIMI. Accused has also confessed that in the first week of May, 2007 Safdar Nagori, Qamruddin Nagori and Hafeez Hussain, Subhan came to their Madarsa in Saidabad, had discussion with his father and with him and later went to the house of Moulana Naseeruddin and stayed in their house. They had discussion about the division of SIMI into two groups.

263. He has stated that CR.No. 1037/05, P.S. Hyderabad was registered and it was a case of criminal conspiracy which occurred on 12th October, 2005 in which one suicide bomber by name Dalin-a native of Bangladesh rushed into the Task Force office at Begumpet and exploded himself resulting in the death of one Home guard-Sri Satyayanarayana and damage to the office building. As all the officers were on *bandobust* duties due to Dusherra festival, major casualties were averted. In this case ten accused were arrested and remanded to judicial custody while the ten other accused are absconding. Charge sheet has been filed on 12th March, 2006.

264. He has stated that in his confessional statement accused Mohd. Abdul Kaleem recorded, has stated that he was a staunch follower of Moulana Naseeruddin (T.T.S.I.) and was inspired by his speeches in Mosques. This accused had confessed that he came in contact with Mujahid Saleem (a SIMI activist) who convinced him to take part in Jehadi activities and in order to take revenge for killing of Mujahid Saleem, he along with suicide bomber Dalin planned to attack the Task Force Office at Begumpet and successfully completed the task.

265. CR.No. 213/2008, P.S. CCS/SIT, Hyderabad was registered and in this case Shri P.V.Muralidhar, Inspector of Police, P.S. Gopalapuram, investigated and recorded confessional statement of accused Baleeghuddin who was arrested in CR.No. 198/2007. Accused-Baleeghuddin had confessed that he was an active member of SIMI who actively participated in Jehadi activities and he had selected Ananthagiri Forest near Vikarabad to wage war against the Government.

266. In CR.No. 87/2010, P.S. SIT, Hyderabad, on 14th May, 2010, Hyder Baig, ASI of P.S. Kamatipura, PC 9884 of P.S. Hussaini alam and HC 627, PCs 811, 868, 649 and 1077 of APSP were on Picket duty at Volga Hotel 'T' Junction, Himmathpura because of Friday prayers. After prayers, the civil PC 9884-G. Santha Rao and APSP PC 649 U.-Ramesh remained at the picket. Two unknown persons had come on a two wheeler and fired three rounds on them with a short weapon as a result of which PC 649-U. Ramesh received bullet injuries and died. "Tahreek Galba-e-Islam" a terror group claimed the responsibility of killing the constable as a revenge of bomb blast at Mecca Mosque on 18th May, 2007. The case is under investigation.

267. Consequently to series of attacks on Police, one Home guard was shot dead and a police constable sustained bullet injuries vide CR.No. 157/2009, P.S. Falaknuma and in the present case where a police constable was shot dead in CR.No. 87/2010 P.S. SIT, Hyderabad. Earlier, a Head Constable had sustained bullet injuries in CR.No. 358/2008, P.S. Kanchanbagh, while nabbing Vikar Ahmed.

268. In all these three cases a cartridge of 7.65 mm were used in the commission of the offences. Discreet enquiries and investigation revealed that Vikar Ahmed who was an active member of DJS and a supporter of SIMI, was the mastermind behind these incidents.

269. PW-55 has deposed about FIR Nos. 882/2004, 410/2004, 1037/2005, 213/2008 and 87/2010. FIR Nos. 882/2004 and 410/2004 were not relevant as such. However, Moutashim Billah, an accused in the said FIRs was arrested and his statements were recorded on 18th March, 2008 in FIR No. 882/2004 and 29th April, 2008 in FIR No. 410/2004. These confessional statements have been placed on record along with affidavit (Exhb.PW55/A) and include in detail the modus operandi and the manner in which he had operated during this period; the persons he had met and what he had done. He has also stated about his involvement with SIMI and other members of SIMI during this period. These statements have been enclosed along with the affidavit.

270. FIR No. 213/2008 was registered on 23rd September, 2008 in P.S. Central Crime Station. This FIR has been registered suo motu on the basis that during investigation of FIR No. 198/2007, P.S. Gopalapuram credible information was received about absconding accused-Baleeghuddin. A perusal of the FIR would indicate the same records as what has been stated by Moutashim Billah in his statements. He has stated that accused Baleeghuddin stated that his family, Moulana Abdul Aleem Islahi's family and Shaik Mahaboob's family were activists and supporters of SIMI which advocates the liberation of India by converting it into Islamic land and to establish Dar-ul-loom by converting everyone into Islam either forcibly or by violence. Also stated that after the ban of SIMI in 2001, all the cadres of SIMI joined the T.T.S.I. The accused has confessed that in the first week of May, 2007, Safdar Nagori, Qamruddin Nagori and Hafeez Hussain, Subhan came to Hyderabad to have a discussion on SIMI and later went to Jaber's house along with Abdul Aleem Islahi and his son Moutashim Billah where he and his brother Yaser were present and they all discussed about spreading of Jihad. Jaber handed over some CDs, audio cassettes, hard disks and literature prepared by him to Safdar Nagori. The material was initially given to him by Vikar Ahmed.

271. During the visit of Safdar Nagori, Qamruddin Nagori and Hafeez Hussain, Subhan, informed them that Abdul Aleem Islahi, Moutashim Billah, Yaser, Jaber and others had conducted a Jihadi training camp at Karnataka State in April, 2006 and they had planned to conduct more camps at Kerala, M.P., Gujarat and Hyderabad. They requested for arrangements of all logistic support to conduct the said camps. Accordingly, Jaber along with his brother Yaser, Moutashim Billah and others searched for various places for the camp and finally selected Anathgiri forest area of Vikarabad near Hyderabad.

272. The said FIR is still under investigation

273. FIR No. 87/2010 was registered in respect of the incident dated 14th May, 2010 when at about 4.00 p.m. two unknown persons came on a two wheeler and suddenly fired two rounds on a police picket after the Friday prayers: Mr. U. Ramesh received bullet injuries on his chest and back side of his left waist and left fore-arm. He was declared brought dead by the hospital. Tehreek Galba-e-Islam, a terror group had accepted responsibility for murdering these policemen as a revenge for killing of Muslims by firing on 18th May, 2007 at Mecca Masjid. A poster/communication in this regard warns the Government of Andhra Pradesh that they should arrest and punish all policemen who had participated in the firing and had ordered the firing by death penalty or their revenge would continue.

274. The case of the police from the State of Andhra Pradesh is that the three attacks/killings which are subject matter of Crime no. 1/2009 P.S. Octopus and Crime no. 87/2010, Hussaini Lumbini, P.S. SIT have been committed by the same persons using a similar weapon. Reliance is placed upon FSL report (Exhb. PW55/B-1) dated 16th June, 2010 which was filed on a question being put by Mr. Ashok Aggarwal, advocate. Thus it is the case of the police that the accused-Viqaruddin, who is a close associate of Moutashim Billah was involved in these crimes. This witness has stated that Moutashim Billah was not arrested for four years as he was absconding and therefore not arrested in the two FIRs registered in the year 2004.

Mr. V.N.V. Satyanarayana (PW-56), Deputy Superintendent of Police; P.S. Octopus, Hyderabad, Andhra Pradesh.

275. Mr. V.N.V. Satyanarayana (PW-56), Dy. Superintendent of Police, OCTOPUS, Hyderabad, Andhra Pradesh in his affidavit has stated that he had investigated Crime No. 1/2008, 2/2008 and 3/2008 which were re-registered with P.S. OCTOPUS. He has stated that on 25th August, 2007, two bomb blasts had occurred inside the Lazerium Lumbini Park, Hyderabad resulting in the death of 12 persons and seriously injuring 21 others. On the said date, another bomb blast occurred in Gokul Chat Bhandar, Koti, Hyderabad resulting in the death of 32 persons and injuring 47 others. Initially FIRs were registered under Sections 302, 307 and 120(B) IPC and Sections 3 and 5 of the Explosive Substance Act by the concerned Police Station before the investigation was handed over to P.S. OCTOPUS. On the basis of the investigation conducted later on, Section 121A IPC and Sections 13, 16, 18, 19 and 20 of the Act were added. FIR No. 2/2008, P.S. OCTOPUS was registered in respect of an unexploded bomb which was located near the foot over bridge at Dilsukhnagar, Hyderabad. It is stated that the provisions of the Act were added on the basis of confessional statements of witnesses, panchanamas, seizure reports, emails, etc.

276. As per the investigation Indian Mujahideen was responsible for the said offences. He has stated that these members were/are from ex-SIMI cadre and include Riyaz Bhatkal @ Roshan Khan @ Aziz @ Ahmed Bhai s/o Akrami Bhatkal, Iqbal Bhatkal @ Mohammed Bhai s/o Akrami Bhatkal, Mohd. Sadique Israr Ahmed Shaik @ Yaseer @ Imran and Amir Reza Khan (presently absconding), Anik Shafique Sayeed @ Anique @ Khaled @ Ashfaq, Mohd. Akbar Ismail Chowdhari @ Sayeed @ Yakub @ Vinod Patil and Farookh Sharfuddin Tarkash @ Abdulla are close followers of Riyaz Bhatkal. They entered into conspiracy to wage war against the State and create disharmony amongst the communities by bomb blasts in crowded places. They also wanted to take revenge for the blast in Mecca Masjid, Hyderabad in May, 2007. The details of the seven arrested accused have been given and it is stated that they are all ex-SIMI activists. The affidavit

sets out the entire modus operandi which was adopted to plant the said bombs. It is stated that as per the interrogation of the arrested terror suspects, a close link was found amongst Lashker-e-Taiba (LeT), Indian Mujahideen (IM) and SIMI. He has alleged that Mohd. Sadiq Shaikh, an ex-SIMI member has been attending terror training camp of LeT in Pakistan via Bangladesh border and on return has recruited ex-SIMI members who were also trained in explosives and other materials. He was acting on the instructions of Amir Raza Khan based in Pakistan. He has further stated that Riyaz Bhatkal, Iqbal Bhatkal and Sadiq Israr Shaikh are the active members of SIMI. Along with the affidavit (Exhb.PW-56/A), he has filed seizure panchanama (Exhb.PW-56/A-4) wherein it is recorded that Anique Sayeed, who had taken them to the premises at street no.8, Habsiguda, Hyderabad on 11th February, 2009 and led them to an open duct located on western side of the terrace from where left over materials after preparation of bombs were recovered and to another property being flat no.320, premises no.5-61, Banjara Nilayam, street no.8, Vivekananda Nagar, Habsiguda, Hyderabad from where books containing details of payment/collection books were recovered. Mr. V.N.V. Satyanarayana (PW-56) has filed some other seizure panchanamas as well.

277. Mr. V.N.V. Satyanarayana (PW-56) in his affidavit has filed the interrogation report (Exhb.PW-56/A-5) of Mohd. Mansoor Peerbhoy, a resident of Pune. The allegation made is that Mohd. Mansoor Peerbhoy was responsible and instrumental for sending the e-mails at the time of Mumbai Bomb Blasts, Ahmedabad blasts and Delhi blasts.

278. Copy of the chargesheets and the FIRs filed in the three cases have also been examined. Exhb.PW-56/A1 to the affidavit (Exhb.PW-56/A) is the statement of Shri Naveed Ahmad recorded under Section 164, Cr.P.C. before the Metropolitan Magistrate for Railways (Secunderabad). He has stated how he met Mohd. Anique at Pune and when he came to Hyderabad, he had shown Mohd. Anique around the various prominent places at Hyderabad city and the place where computer training could be taken. Shri Naveed Ahmad has stated that Mohd. Anique had bought a second hand mobile phone for which a SIM card was purchased on his identity papers. Mohd. Anique stated that he was leaving for Pune. The said witness-Shri Naveed Ahmad had stated that he had met Anique, Farooq and Akbar in Pune who then informed him that explosions had taken place in Hyderabad and they were responsible for the said blasts. Mohd. Anique had told the said witness that after meeting him in Hyderabad, he had not returned to Pune but had taken on rent a two bed room flat in Habisguda, Hyderabad and Akbar had stayed with him. Both of them took admission in Doom Technology in Ameerpet. Riyaz Bhatkal had joined them in Hyderabad and guided them in planting bombs,etc.

279. Proceedings of TIP (Exhb.56/2A) has been placed on record. Mohd. Anique was recognized/identified in the TIP by three witnesses. There are two statements of Mohd. Sadiq Israr Ahmed Shaik. Statement (Exhb.PW-56/A-3) dated 14th April, 2009 was recorded by M. Dayananda Reddy, Inspector of Police, OCTOPUS. The earlier statement of Mohd. Sadiq Israr Ahmed Shaik dated 4th April, 2009 has also been placed on record and is marked Exhb.PW-56/D1. This statement was recorded by Mr. V.N.V. Satyanarayana (PW-56). Mr. Ashok Aggarwal, advocate has submitted that the two statements are substantially the same except for one material para pertaining to role of Riyaz Bhatkal and Ansar Ahmed Badshah Shaikh. It was accordingly submitted that the statements are therefore unreliable. The said para reads as under:—

“In pursuance of the conspiracy hatched by me, Riyaz Bhatkal and Ansar Ahmed Badshah Shaikh at the house of Anwar at Cheetah Camp, Mumbai, Riyaz Bhatkal and his team did blastings in Hyderabad on 25-8-2007. Later I came to know that the members of the Riyaz team, Anique Shafique Sayeed, Akbar Ismail Chaudary and Riyaz Bhatkal went to Hyderabad and committed the blastings.”

280. I have examined the said para. The aforesaid para may be relevant in the criminal trial but as far as this Tribunal is concerned in both the statements dated 4th April, 2009 (Exhb.PW-56/D1) and 14th April, 2009 (Exhb.PW-56/A-3), the material allegations are the same. Mohd. Sadiq Israr Ahmed Shaikh has stated that in 1996 while he was working in Godrej Company, he was impressed with the programme taken up by SIMI and he used to attend the weekly meetings along with several others including Riyaz Bhatkal. In these meetings they used to discuss current issues, Quran, Hadis, Jihad. He had also attended a SIMI camp in 1996-97 and he felt the emotional plight of the Muslims. Subsequently, he felt that SIMI was not taking up any activity and he started staying away from the said meetings.

Dr. R. S. Praveen Kumar (PW-57), Joint Commissioner of Police, Special Branch, Hyderabad, Andhra Pradesh

281. This Nodal Officer has referred to several FIRs from 2001 onwards till 2010. These FIRs have been also relied upon by other witnesses. He has however stated that the accused in Crime no. 198/2007, P.S. Gopalpuram have been acquitted.

GUJARAT

Mr. Narayansinh Bhavansinh Parmar (PW- 41), ACP, Surat, Gujarat

282. He has stated that between the period of 27th July, 2008 and 9th August, 2008, 29 live bombs were found from different places in Surat. Two Wagon-R cars bearing forged numbers were also found loaded with bombs and explosive substances. In all, 15 cases have been registered in different Police Station and investigations were handed over to him. The accused in these 15 cases are common and almost identical charge sheets have been filed. Therefore one charge sheet in CR. No. 176/08 of P.S. Kapodara, Surat was being filed before the Tribunal.

283. He has stated that bombs were planted in thickly populated areas frequented by Hindus which had created a tense situation in Surat. An e-mail 'Rok Sako To Roklo' was sent through media with an intention to create hatred and communal tension. He has further stated that circulation of e-mail in the media was a pre-planned criminal conspiracy of the newly formed Indian Mujahidin. During the course of investigations of 15 cases, total no. of 54 accused persons have been arrested and 27 were still absconding. 93 charge sheets including supplementary charge sheets were filed and submitted before the Spl. Designated Court at Mirzapur, Ahmedabad. He has stated that SIMI is against Indian nationalism and aims to replace it with the International Islamic Order. He has also stated that SIMI is continuing with activities in the State. Earlier PS Athwa, Surat had registered CR. No. II 442/02 in which it is stated that SIMI activists held a seminar under a leadership of Ata Ullakhan Rehman Qureshi, resident of Saharanpur, U.P. In this case 132 accused were involved and out of these 127 were arrested and 5 are absconding. He has further stated that 6 out of these 132 accused of this case were involved in the 35 cases of bomb blast registered in Surat and Ahmedabad. Accused Sajid Mansuri resident of Surat is in the list of absconders and is a key accused in Surat bomb plantation cases. The case is still pending trial.

284. The said witness has been extensively cross-examined on the three e-mails (annexure V to the affidavit and collectively marked Exhb. PW-41/A-6). He has stated that the Mumbai police had done investigation in respect of the three e-mails. It is apparent from his cross-examination that he was not aware and fully conscious about the investigation carried out in respect of the e-mails. His cross-examination reveals that he was uncertain even about the dates on which the said e-mails were sent. However, the dates of the respective e-mails are available and is a matter of record. These e-mails are not in dispute. The dates on which these e-mails were sent cannot as such be disputed as it is a matter of common knowledge. The I.P. addresses from where these e-mails were sent are a matter of record. In his cross-examination, he was asked questions in respect of Ken Heywood. It is the contention of the Central Government that Ken Heywood's wi-fi internet was hacked to send the e-mail dated 26th July, 2008. This witness was re-examined on behalf of the Central Government. In the cross-examination he has clarified the dates when the three e-mails were sent. Mr. Ashok Aggarwal, advocate had objected to the same and submitted that the witness was tutored about the dates of e-mails during the lunch break. This may be correct but to my mind this makes no difference as the dates on which the e-mails were sent cannot be disputed and are matter of record.

285. PW-41 has also filed truncated statement of star witness 'S' at pages 1419-1425 (Exhb. PW-41/A-8). This statement of star witness 'S' has been recorded by PW-41. It is also stated that a similar statement was also recorded by a Magistrate under Section 164, Cr.P.C. Certified copy of the said statement under Section 164 has not been filed on record. On an application filed by the Central Government, a request order was sent to the Magistrate in Gujarat but the statement under Section 164 Cr.P.C. has not been filed. Mr. N.B. Parmar (PW-41) has stated that he does not remember whether he has recorded the statement of the star witness 'S' in Gujarati or in English.

286. PW-41 has stated that SIMI got funds through donation, membership fee and financial assistance provided from Gulf Countries. Fundamentalist outfits like the Pakistan based Hizb-ul-Mujahideen and Lashkar-e-Toiba have penetrated into SIMI cadres to achieve their goal. Inspite of the ban on SIMI, its activists organised a camp in December, 2007 at Wagaman Forest in Kerala State where training programme in firing practice, preparing petrol bomb, pipe bomb, swimming etc. was undertaken.

287. He has stated that the leaders of SIMI Gujarat such as Arif Kagzi, Sajid Mansuri, Kayamuddin Kapadia, Yunus Mansoori and the office bearers at national level Safdar Nagori, Kamruddin Nagori, Abdul Subhan etc. organised a training camp in January, 2008 in the forest of Halol-Pavagadh, Gujarat.

288. In the charge sheet it is alleged that the accused intended to take revenge for destruction of Babri Masjid and atrocities committed on Muslims during the Gujarat riots. They wanted/want to establish Islamic shariat rule. Accordingly, with the intention to spread terror and disturb law and order situation, they had taken resort to bomb blasts. They wanted to destroy the peace, prosperity, integrity and sovereignty of the country. Some of the accused were active members of SIMI which is a terrorist organisation and banned by the Central Government. Members have gathered together as Indian Mujahideen which is a new form of SIMI.

289. He has further stated that SIMI emphasises on the formation of Shariat based Islamic rule through Islamic Inqilab.

Ms. Ushaben Bachubhai Rada (PW-42), S.D.P.O. Kalol, Gandinagar, Gujarat

290. On 26th July, 2008, a series of bomb blast occurred in various areas of Ahmedabad which resulted in death of 56 persons and grievous injuries to 240 persons. In all 20 FIRs were registered at various Police stations. She has further stated that two major public hospitals were also targeted. Till date 64 persons have been arrested and others were absconding. During the interrogation of these accused it was found that members of SIMI and its new form Indian Mujahidin had played

a pivotal role in executing these blasts. She has stated that investigation of 6 cases out of 20 cases were given to her. She has stated that the accused were members of SIMI and to mislead their actual identity they had worked under the new name of Indian Mujahidin.

291. She has stated that inspite of ban on SIMI, the accused in order to carry out their illegal activities had convened meetings at Ahmedabad and different cities of Gujarat and jehadi speeches were made. In these meetings members were given training by showing videos, CDs, demonstrations how to prepare bombs etc. They entered into a conspiracy. She has stated that the accused in the 20 cases were common and the charge sheets were similar. She has stated that the charge sheet in CR.No. 236/08 was filed along with the affidavit of Mr. V.R. Toliyā.

292. She has stated that SIMI got funds through donation, membership fee and financial assistance provided through Gulf Countries. Fundamentalist outfits like Pakistan based Hizb-ul-Mujahideen and Lashkar-e-Toiba has penetrated into SIMI Cadres to achieve their goal. He has further stated that organisation emphasises on the formation of Shariat based Islamic rule through Islamic Inqalab. Some of these accused were also involved in cases of unlawful activities in different States. Imposition of ban on SIMI is legally justified.

293. In the cross-examination, Ms. Ushaben B. Rada has denied the suggestion that the accused are not part of the conspiracy and members of SIMI. She has stated that the official records support this averment that accused were members of SIMI. She has denied the suggestion that SIMI is not a terrorist organization, that SIMI is not functional and operational or that she had added the name of SIMI to create fear in the minds of the public or for propaganda purpose to show that the police has solved cases in which members of SIMI were involved. She has denied the suggestion that she had stated that Indian Mujahideen and SIMI are same organization, to support the continued ban on SIMI.

294. Ms. Ushaben B. Rada (PW-42), was recalled for further cross examination after PW-44, Mr. Mayur Jagmalbhai Chavda had stated that she had investigated the e-mails with Mumbai Police. She was extensively cross examined on Ken Heywood. She has stated that Ken Heywood's system was unsecured and the log of the wi-fi system was disabled. But as per the investigations, the e-mail from Ken Heywood's wi-fi was sent by hacking the wi-fi. Even if the log of wi-fi system of Ken Heywood was disabled, investigation could have revealed whether it was hacked or not. As per Ms. Ushaben B. Rada (PW-42), Ken Heywood wi-fi was hacked for sending the e-mail.

Mr. Vinod Ramjibhai Tolia (PW-43), ACP, 'A' Division, Ahmedabad, Gujarat.

295. Mr. Vinod Ramjibhai Tolia (PW-43) has stated that on 26th July, 2008, a series of bomb blasts had occurred in different parts of Ahmadabad City between 18.15 hrs to 19.45 hrs which resulted in death of 56 persons and grievous injuries to 240 persons. He was the Investigating Officer of the 7 cases out of the 20 cases, which were registered after the blasts. As per his investigation, the accused involved in the blasts, some of whom have been arrested and others, who were absconding, were members of SIMI and they were trying to mislead their actual identity therefore they worked under the new name of Indian Mujahidin. He has stated that 64 accused have been arrested. He has stated that SIMI has re-grouped itself in the new form as Indian Mujahidin and has played a pivotal role in executing these blasts. He has proved on record the 3 e-mails sent by Indian Mujahidin. Two emails refer to SIMI and state that Indian Mujahidin is not associated with SIMI. At the same time, one newspaper has been threatened not to carry out untrue and deceptive propaganda about SIMI. The e-mails have been discussed separately. The FIRs in 7 cases have been proved on record as Exhb. PW-43/3. As per the said witness, he has during the course of investigation and interrogation of the accused formed an opinion that SIMI arranges for his finances from donations, membership fee and financial assistance from time to time from the supporters from Gulf countries, Pakistan, Afghanistan, Saudi Arabia, Bangladesh and Nepal. Members of SIMI are a group of students and youths and some of them are influenced by hard-core Muslim terrorist organizations including Pakistan based Hizbul-Mujahideen and Lashkar-e-Toiba. He has stated that the investigation revealed that SIMI activists had arranged camps in December, 2007 at Waghamon, Kerala and in January, 2008 in the forest of Halol Pavagadh, Gujarat for imparting training. In these camps jehadi speeches were delivered and physical training to use bombs and explosive material was given. These camps were used for delivering brain washing speeches and inciting Muslims against the secular spirit of the country. He has filed on record two panchnamas dated 27th August, 2008 and 17th November, 2008. Panchnama dated 27th August, 2008, states that the accused Jahid Kutubuddin Sheikh had taken them to the spot where on 13th, 14th and 15th January, 2008, a jehadi camp was organized in which several persons including Safdar Nagori, Kamruddin Nagori, Arif Kagzi etc. had given provocative speeches. He has also showed them the places where the persons who had come for training had stayed. The second panchnama is on the basis of the statement of Rafiyuddin Sarifuddin Kapadia, which is also on the same lines. He has stated that a camp was held on 13th, 14th and 15th January, 2008 in Pavagadh forest area in which Safdar Nagori and others had given provocative speeches. He had pointed out the places where the persons who had come for training had visited and stayed.

Mr. Mayur Jagmalbhai Chavda (PW-44), ACP, Crime Branch, Ahmedabad, Gujarat

296. Mr. Mayur Chavda (PW-44) is the Investigating Officer of 7 out of 20 cases registered after the Ahmedabad bomb blasts. He has reiterated what Mr. Vinod R. Tolia (PW-43) has stated. He has also relied upon the statements of witnesses which were recorded by him but has truncated names and details of the witnesses. He has relied upon the charge-sheet filed by Mr. Vinod R. Tolia (PW-43). He has denied that the statement of witnesses under Section 164, Cr.P.C. were recorded after pressurizing and threatening them. He has also denied that after the bomb blasts a number of persons were illegally detained. He has stated that he had not investigated the matter pertaining to hacking of Ken Heywood's wi-fi/ computer.

297. Mr. Siddhaisinh Bhati (PW-45), Dy. Inspector General of Police, CID (Intelligence Bureau), G.S. Gandhinagar, Gujarat is the Nodal Officer. He has stated that after the bomb blast 20 cases were registered in Ahmedabad city and after recovery of unexploded IEDs in Surat, 15 cases were registered in Surat city. In this case, SIMI activists have been arrayed as accused and in most of the cases the accused are common. He has stated that 14 cases were registered before 7th February, 2008 against SIMI and in one case there has been conviction and in two cases accused have been acquitted. 11 cases are pending.

298. In his cross examination he has denied that the accused in the cases mentioned at serial nos. 9, 12, 13 and 14 of Annexure 4 (Exhb.PW-45/A-4) do not relate to SIMI activists. He has however stated that he does not have personal knowledge. He has denied that case at serial no.10 was not connected or related to SIMI. However, he has stated that he does not know whether the case at serial no.11 is connected with serial no.10. Cases at serial nos. 1-6 are prior to the first ban on SIMI on 27th September, 2001.

MADHYA PRADESH**Mr. B.P.S. Parihar (PW-58) Investigating Officer of the FIR No.12 dated 27th March, 2008**

299. Mr. B.P.S. Parihar (PW-58) is the Investigating Officer of the FIR No. 12 dated 27th March, 2008 registered under Sections 122/124A/153A IPC, Sections 3, 10 and 13 of the Act and Sections 24/27 of the Arms Act, police station Pithampur Distt. Dhar, M.P. He has stated that on 26th March, 2008 information was received that a meeting had been convened by Safdar Nagori, Chief of SIMI at Silver Oak Factory situated in the forest of Pithampur. A police team was sent to raid the place but by the time they reached the place the meeting was over. A newspaper 'Maqtal' in Urdu language published from Calcutta was found at the spot. On the basis of leads, a raid was conducted at Shyam Nagar, Indore in the house of Gaffar Khan Bakerywala. SIMI Chief Safdar Nagori and 12 other persons were found and following seizures were made:—

- (i) Accused-Safdar Nagori : 1 pistol 7.65 mm with 7 live cartridges, Cellphone, cash of Rs. 11,800/-, 3 masks and 4 books written in Urdu language with wrist watch mobile charger, one gunny bag containing 122 explosive gelatin rods, 100 detonators, documents/papers etc.
- (ii) Accused- Hafiz Hussain: 1 pistol 7.65 mm with 5 live cartridges, Cellphone, cash Rs. 3,000/-, visiting card in the name of D.M. Akhtar, 4 books written in Urdu language, black mask, mobile charger, wrist watch.
- (iii) Accused-Amil Parvaz: 1 pistol 7.65 mm with 5 live cartridges, Cellphone, cash Rs. 2,000/-, black coloured mask, 4 books written in Urdu language, wrist watch, mobile charger, Rexene bag etc.
- (iv) Accused-Shivli S/o Abdul Karim: 1 pistol 7.65 mm with 5 live cartridges, cash Rs. 4,000/-, black coloured mask, books written in Urdu language and mobile charger, wrist watch, Rexene bag etc.
- (v) Accused- Kamruddin : 1 pistol 7.65 mm with 5 live cartridges, one cell phone, black coloured mask, cash of Rs. 55,000/-, SIM card of Idea, 4 books written in Urdu language, Rexene bag, mobile charger, 105 pamphlets having Babri Masjid and Shirk printed on it, 140 pamphlets having printed on it " Jaari Rahegi Jaddojehad" etc.
- (vi) Accused- Shaduli S/o Abdul Karim : One letter of SIMI training programme, one black coloured mask, cash Rs. 2,200/- and books written in Urdu language.
- (vii) Accused- Yasin S/o Abdul Hamid: Cash Rs. 1,200/-, one black mask, one Rexene bag containing Kerala tourism's Map of India, 5 books in Urdu language, newspapers.
- (viii) Accused-Ansar S/o Abdul Razzak : One cellphone Vodafone, Cash Rs. 1,500/-, one black mask, one bag containing books written in Urdu language and timetable of Indian Railways.
- (ix) Accused-Munroz: Cash Rs. 1,300/-, First Aid Box, One black mask, Indian Railway Timetable, one bag containing 5 books in Urdu language.
- (x) Accused-Shami S/o Dade Shah : Cash Rs. 1,100/-, one black mask, 25 pairs of hand-gloves, one bag containing 4 books in Urdu, 8 copies of Urdu Newspaper 'Maqtal'.
- (xi) Accused- Khalid Ahmed : Cabs Rs. 5,505/- cellphone Nokia made, Briefcase, one desktop computer with CPU and 10 CDs, 02 Pendrive, one black mask, one copy of SIMI training programme, 4 books of Urdu literature.

(xii) Accused-Ahmed Beg: One pistol 7.65 mm with 5 live cartridges, one Nokia made Cellphone, Rs. 4,000/- cash, one Pendrive, 12 CDs, one TV Tuner Card, TFT computer with CPU, one bag and 4 books in Urdu literature.

(xiii) Accused- Kamran S/o Hazi Shahid: One pistol 7.65 mm with 5 live cartridges, Cellphone Nokia made, cash Rs. 2,200/-, one black coloured mask."

300. On the basis of the disclosure statement made by Safdar Nagori, vide Exhb.PW-58/A-3 the following recoveries were made:—

(i) Accused- Shehzad Khan : Documents of Registry of Agricultural Field.

(ii) Accused- Safdar Nagori: one gunny bag containing 122 explosive gelatin rods, 100 detonators, documents/ papers etc.

(iii) Accused- Kamruddin: 105 pamphlets having Babri Masjid and Shirk printed on it, 140 pamphlets having printed on it "Jaari Rahegi Jaddojehad" etc."

301. The seized documents include pamphlets of Student Islamic Movement of India, Madhya Pradesh Zone. The documents recovered also include a donation card of Rs. 500/- in the name of SIMI, Madhya Pradesh Zone.

302. The documents (Exhb. PW-58/A-3) propagate hatred and instigate communal violence and killings as justified and required. It was submitted that these documents were printed prior to first ban on SIMI on 27th September, 2001. The said contention does not appear to be correct and has no merit as these documents were recovered as late as on 26th March, 2008. Obviously, the persons carrying the said documents were propagating and utilizing them. These documents were being used and utilized even on 26th March, 2008. The persons using and utilizing these documents were members of SIMI and the name of SIMI was prominently mentioned on it. The emblem of SIMI with a gun with blood is prominently displayed on these documents. Along with affidavit of PW-58, Mr. B.P.S. Parihar, statements of several witnesses like Kutbuddin, Shami Ulla, Amil Parwaz, Shaduli, Kamran, Shivli etc. have been filed.

303. On the basis of leads given by Safdar Nagori that he along with Kamruddin and Amil Parvaz used to train SIMI activists and have organized camps in the farm house of Shehzad, a resident of Mhow, M.P., search was conducted. Explosives and detonators recovered from the spot indicated in the farm house. Shehzad and Nafsher, owners of the farm house, were arrested and charge sheeted.

304. Safdar Nagori revealed that the pen drives, CDs and computers recovered were obtained from Javed and Yasir.

305. On the basis of material found from Safdar Nagori, a communication was addressed to the SPs of all other districts of Madhya Pradesh and various State Governments informing about the investigations made. Information was given to the districts on the basis of papers, diaries and call details recovered and unearthed from Safdar Nagori and others house. Charge sheet and supplementary charge sheets have been filed.

306. In the cross-examination, reference was made to the confessional statements collectively marked Exhb. PW-58/A-7 and it was stated that FIR numbers, name of the recording officer, date, signatures of the person concerned and witness were not mentioned. PW-58 stated that the name of the recording officer and the date was mentioned in the case diary. It was suggested that some of the statements were made to Karnataka and Haryana Police. This suggestion was denied. PW-58 has stated that except four statements of Kamruddin at page 93, Hafiz at page 109, Kamran at page 136 and Mirza at page 149 of the affidavit, all other statements were recorded by him. My attention was drawn to question and answer at page 334 of the cross-examination file, which reads as under:

"Q. Is it correct that no incriminating material except the alleged newspaper was seized from the site of the meeting?

A. Detonators and pamphlets were seized from the site at a later stage. Vol. The first meeting was held on 26.3.2008 and in that meeting a newspaper was seized. Another meeting was held in October, 2007. After interrogation detonators and pamphlets were seized on 2.4.2008."

307. It was submitted that as per this answer the detonators, etc., were recovered from meeting point at Silver Oak factory and the answer is very confusing. A newspaper was recovered from Silver Oak Factory as stated above. The witness has stated that detonators and pamphlets were seized subsequently. He does not answer about the site. He, however, gives the date of seizure as 2nd April, 2008. The seizure documents mention the spot from where the seizure was made. Huge recoveries in form of 122 explosive gelatin rods, 100 detonators, etc. have been shown from the accused. It was submitted that the accused had thrown away the SIM cards and only one SIM card was recovered. It was submitted that this makes recovery of pistols, etc. at the time of arrest from Safdar Nagori is doubtful. It is not possible to accept the said submission. It is easy to throw away and destroy a SIM card than a pistol or other weapons. Further, SIM card contains data, which can be used and can furnish leads for investigation and result in arrest of others.

Mr. Manoj Kumar Rai (PW-59), Additional Superintendent of Police, Khandwa, Madhya Pradesh

308. Mr. Manoj Kumar Rai has referred to three FIRs. Two of them were registered in the year, 2001 and one was registered in 2006. In FIR No. 467/2001, P.S: Kotwali, Amin Khan was arrested for distributing literature, publications and other paper cuttings. A letter of SIMI circle Khandwa was also found. By this letter, a meeting was invited on 2nd October, 2001. A list of members and post holders of Khandwa circle of SIMI was seized. Interrogation revealed that Amin Khan was Finance Secretary of Khandwa unit of SIMI.

309. PW-59 also refers to a fourth FIR being FIR No. 6/2009, registered at STF, Bhopal on 4th November, 2009. However, copy of the said FIR has not been enclosed with the affidavit. The affidavit also states that another FIR No. 15/2008 was registered by Police Station S.O.G., Rajasthan. Copy of the said FIR has also not been enclosed. However, it is noticed that this witness was extensively cross-examined on recoveries of pamphlets, etc. which were seized in FIR No. 256/2006. PW-59 has stated that on 16th March, 2006, three persons were arrested for promoting and propagating SIMI. On the basis of the statement made by the three persons, Ashiya and Rafiya two sisters were arrested from their house and some material was seized including copies of April and June, 2004 editions of the magazine Tehrik-e-Millat and February, 2006 edition of magazine Tehrik. A receipt number 003359 dated 25th January, 2006 in the name of Kumari Ashiya Khan was also seized. This witness has stated that the word 'Ashiya' on the magazine in Hindi Tehrik-e-Millat was written on all the three copies of April, 2004 edition. The word 'Rafiya' was written by hand in Hindi in the February, 2006 edition and June, 2004 edition of magazine Tehrik-e-Millat seized from Rafiya. PW-59 has stated that he cannot answer whether the word 'Rafiya' was already written when the magazine was seized and IO can answer the same. He has also stated that the word 'Rafiya' has been mentioned to distinguish them from other documents recovered from other accused. It does appear that copies of the same magazines with the name Ashiya has been recovered by Mumbai police and relied upon in several other cases. Reference can be made to affidavit of PW-32, Mr. Sunil Mane, PW-33, Mr. Rahimtullah Inayat Sayeed, PW-36, Mr. Milind Bhikaji Khetle, PW-37, Mr. Sadashiv, and PW-63, Mr. Surendra Singh Baghel, who has registered FIR No. 202/2008. Prima facie, there appears to be some merit in the submission made by Mr. Ashok Aggarwal, Advocate. However, this question will have to be adjudicated and decided in the criminal trial. For the purpose of present proceedings, I am completely disregarding these recoveries. In any case, I am not relying upon statement of PW-32, 33, 36 and 37. I am also, therefore, not relying upon the statement of PW-63, Mr. Surendra Singh Baghel.

Mr. Chandrashekhar Wagh (PW-60), Investigating Officer of FIR No. 05/2009

310. Mr. Chandrashekhar Wagh (PW-60) is the Investigating Officer of FIR No. 05/2009 registered under Sections 147, 153 A, 153 B Indian Penal Code and Sections 3, 10 and 13 of the Act, police station Khajrana, Madhya Pradesh. Copy of the said FIR has been marked as Exhb. PW-60/A-1. The witness has stated that on 20th October, 2009 they had received information that members of SIMI would visit Khajrana, Indore. He led a team and found that 5 persons in a meeting near Iran Wale Baba Ki Dargah, Khajrana. A provocative audio cassette was being played. These people were making anti-national and inflammatory statements when they were arrested. On search, a CD, Urdu books etc. containing inflammatory materials were found. On the basis of the statements made, objectionable material was also found from their residence. However, copy of the said inflammatory material has not been filed on the ground that the same has been filed before the Court and they have not kept photocopy of the same. However, the said witness during the course of cross-examination has stated that pamphlets of SIMI were seized from the spot.

Mr. Vikram Singh Bhadaria (PW-61), Inspector, P. S. AJK, Shivpuri, Madhya Pradesh

311. Mr. Vikram Singh Bhadaria has stated that FIR No. 142/2008 was registered under Section 153A IPC and Sections 3, 10 and 13 of the Act against Faizal, Irfan and Shakir. From the residence of Shakir on 6th April, 2008 pamphlets with the name Babri Masjid and Shirk were recovered. In the bottom of these pamphlets, the words Student Islamic Movement of India, Madhya Pradesh zone is printed. Audio cassettes were also recovered. Similarly, 35 pamphlets were seized from the residence of Irfan and Faizal.

312: During the course of arguments, my attention was drawn to FIR at page 35 and the word used therein. It appears that there is some translation error. One of the papers recovered from the residence of Faizal was anti-muslim article allegedly printed on behalf of 'Hindu Rioters Forum'. This article as per the Central Government was being misused to instigate Muslims to take revenge and indulge in violence.

Mr. M. K. Tiwari (PW-62) Inspector, P.S. Karel, Narsinghpur, Madhya Pradesh

313. He has stated that FIR No. 399/08 Exhb. PW-62/A-3 was registered on the basis of the statement of Mohd. Ali Exhb. PW-62/A-2 and also on the basis of an earlier case registered against Mohd. Irfan by Ahmedabad Police in 2001. He has admitted that the FIR No. 399/08 Exhb. PW-62/A-3 was not registered on the basis of any specific incident and volunteered that the FIR was registered because of the connection. In response to the Tribunal Question as to what did he mean by the term "connection" he stated that in the statement of Mohd. Ali it was mentioned that he used to meet Irfan in Karel and also take money from him. He has stated that he was aware of one other case i.e. Crime No. 120/08 which was registered by the Pithampur police, Madhya Pradesh.

314. He has stated that at page 28 A, he had mentioned the name of Irfan in absconders' list because at that he was not arrested and was absconding. He has denied the suggestion that the papers seized by him in the present case have no connection with SIMI. He has stated that he had not made any verification from any independent documentary source whether the accused arrested in his case were members of SIMI. He has denied the suggestion that the case against the accused was false or that accused were not members of SIMI at any time. He has stated that sanction letter was still awaited.

Mr. Surendra Singh Baghel (PW-63), ASI, P.S. Misrod, Bhopal, Madhya Pradesh

315. Mr. Surendra Singh Baghel has relied upon recovery of June, 2004 edition of Tehrik-e-Millat and photocopy of receipt in the name of Kumari Ashiya Khan. On the receipt, signature of Mohd. Ali appears at point 'A'. The magazines are photocopies of the original. In June, 2004 edition of Tehrik-e-Millat, the word 'Rafiya' in Hindi by hand is also seen. Doubts have been created about the alleged recovery of these magazines. In these circumstances, I am not inclined to take into consideration this affidavit and evidence. It may be stated here that PW-62, Mr. M.K. Tiwari in his cross-examination has stated that FIR No. 399/2008 was registered on the basis of statement made by Mohd. Ali. This does not mean that FIR No. 399/2008 itself is doubtful or incorrect. The question raised is whether documents in question were planted on Mohd. Ali. It is debateable and doubtful.

Mr. Shalendra Singh Jadon (PW-64), Sub-Inspector, Police Station, Mahakal, Ujjain, Madhya Pradesh

316. He has stated that he has made recoveries on the basis of disclosure statement of Kayamuddin. The recoveries include copy of membership form, Ansar membership form of SIMI and coupons and receipts for donations of Rs.10, Rs. 25 and Rs. 50 for SIMI. Photocopies of fund collection receipts and literature and publication of SIMI were found. Papers listing aims and objects of SIMI, its organizational structure and history were found. Some of the papers contain inflammatory and offensive articles. He has denied that the material seized was printed and published before SIMI was banned on 27th September, 2001. He has denied that the statement of Kayamuddin has been fabricated by the police. He has stated that Kayamuddin was arrested by Daulat Singh, SHO, Police Station, Mahakal, District Ujjain. It is further stated that Kayamuddin was handed over to Delhi Police on transit remand. Gujarat Police had also asked for transit remand of Kayamuddin.

Mr. Ray Singh Narwaria (PW-65), Additional Superintendent of Police, District Ujjain, Madhya Pradesh

317. Mr. Ray Singh Narwaria has referred to FIRs which were registered against SIMI activists in 1997 onwards till 2006. He has stated that Kayamuddin used to organize meetings and instigate people to follow Jehad. Despite ban on SIMI, Kayamuddin has continued with the said activities. Kayamuddin is an accused in FIR No. 236/2008 registered at Ahmedabad. In this FIR, he was arrested in Ujjain city on 10th December, 2008. He has stated that he has given details of 33 SIMI activists in Ujjain district against whom cases have been registered. He has stated that 6 SIMI activists from Ujjain district were absconding.

Mr. D.S. Yadav (PW-66), Superintendent of Police (OPS), ATS, Bhopal, Madhya Pradesh

318. Mr. D.S. Yadav was examined in the Chamber. He has submitted four CDs. The CDs have live video/audio statements recordings of two of the accused, who are members of SIMI. Transcript of the said statements has also been given. The accused in their statements have admitted their association with SIMI and that they have indulged in violent acts. The recorded interrogations are elaborate and detail. They show how wide the tentacles of SIMI have spread. Young boys of impressionable age, who have been swayed and swept.

Other witnesses from the State of Madhya Pradesh

319. After arrest of Safdar Hussain Nagori and on the basis of interrogation and materials like personal diary, mobile phones, telephone numbers, call details, investigation done, 18 cases have been registered in different police stations in Madhya Pradesh in March and April, 2008. Four more cases were registered thereafter. It is the contention of Mr. Ashok Aggarwal, advocate that these cases are fictitious, false and material has been planted. Accused are being prosecuted because their names figure in one document or other or in the call details. It is alleged that several FIRs are identically worded and allegations are vague and a make-belief. I have examined these cases and the affidavits filed in support thereof. There is some merit in the submission of Mr. Ashok Aggarwal, advocate. These cases require a re-look. As I have doubt, I am not relying upon these affidavits/witnesses, except to the extent indicated below. Most of these affidavits even if accepted only show that printed material of SIMI was available with the accused. Some of the material may also be inflammatory and objectionable. Out of these affidavits I am only inclined to rely upon the following affidavits :

- (a) Mr. Omesh Sharma (IW-83) is the Investigating Officer in FIR 239/2008, P.S. Kotwali, Sehore. In this case during search, substantial number of pamphlets and other materials were recovered. A diary in urdu pertaining to the year 2001 was recovered. It has names of SIMI members and posts held by them is mentioned. The diary may have been written in 2001 but was retained by the accused till 2008.

- (b) Mr. Hari Shanker Tiwari (IW-101), has stated that he was posted at police station Chachoda Distt. Guna as SHO since 19th March, 2010 and has been appointed as a Nodal Officer. He has stated that FIR No.104/2008 was registered on 7th April, 2008 under Sections 3, 10 and 13 of the Act and copy of the said FIR is marked Exhibit-2 to the affidavit. He has stated that offending material was seized during the course of search on 7th April, 2008 from the residence of Rafeeq Molana where a meeting was attended by 9 persons, who were members of SIMI. 5 persons were arrested but 4 persons fled away. Copy of the offending material relating to SIMI has been placed on record as Exhibit-4 from page Nos. 32 to 52A of the affidavit. It is pointed out that after the charge sheet was filed, the case has resulted in conviction by the judgment dated 8th February, 2010 passed by Judicial Magistrate and the accused, who were facing trial were awarded two years' rigorous imprisonment under Sections 3 and 10 of the Act and three years rigorous imprisonment under Section 13 of the Act. Appeal, however, is pending.
- (c) Mr. Ritesh Sahu (IW-102), SI, ATS Unit Jabalpur, Madhya Pradesh has stated that on 3rd November, 2009 a raid was conducted near Dada Miyan ki Dargah in Kabristan, Madar Tekri in Jabalpur as a meeting was being held there to propagate views and ideology of SIMI. Four persons were arrested. Before arrest these persons were searched/frisked and 4 CDs containing inflammatory songs about the Babri Masjid and copies of SIMI magazines were seized. Thereafter, FIR No. 06/2009 was registered under Sections 153A, 153B, 120 B IPC and Sections 3, 10, 13A and 13B of the Act was registered. Copy of the FIR is Exhibit-A. He has further stated that Inamurrahman, Secretary of SIMI with the help of others was trying to collect funds for SIMI and for this reason he had come to Jabalpur. They were trying to brain wash and convince the youths to indulge in unlawful activities by making provocative speeches. It is stated that the accused used to organize picnics and convince youth to engage in unlawful activities in the name of religion. It is also stated that the accused in the said case had visited several places to recruit new members in SIMI. The accused had set up a network for collection of funds for SIMI organization. The case is still pending trial. Along with the affidavit the witness has enclosed as exhibits B and C, the panchanama and a hindi translation of the book which describes why and when suicide attacks should be undertaken.
- (d) Mr. Daulat Singh (IW-93), Inspector, Police Station Mhow, District Indore, Madhya Pradesh has stated that FIR No.699/2008 under Sections 3, 10 and 13 of the Act was registered at Police Station Mahakal, Ujjain City against Kayamuddin. It is stated that the area in question was cordoned off to arrest the accused. The accused emerged out after some time. Copies of membership form of SIMI and large amount of literature of SIMI and other literature were recovered from the possession of these accused. However, along with the affidavit the seized material or copy thereof has not been filed. Thus the Central Government gets limited support from this affidavit.

Mr. Yashpal Dabas (PW-67), Director, Ministry of Home Affairs, Government of India.

320. He has filed an affidavit and produced in sealed covers files of the Ministry of Home Affairs relating to the issue of Notification dated 5th February, 2010. He has been extensively cross examined by Mr. Ashok Aggarwal, advocate though he has deposed only on the basis of official records. Even in the written submissions a number of pages have been devoted to his evidence. As held by the Supreme Court in the *Jamait-e-Islami Hind* (supra) the Tribunal is required to adjudicate the lis between the Central Government and the Association and whether there is a sufficient cause to ban the association. The Tribunal's jurisdiction is circumscribed by Section 4(3) read with Section 3(3) and other provisions of the Act. This has been repeatedly held by the first three Tribunals, after referring to provisions of the Act.

321. Even otherwise I have examined the files of the Central Government produced before me in sealed covers. I am satisfied that there was due and adequate application of mind before the order under Section 3(1) of the Act was made on whether or not ban on SIMI should be reimposed. After considering the information and details furnished by the State Governments and the Intelligence Bureau the Order under Section 3(1) was passed. It may be noted that not even a single State Government had objected or stated that ban on SIMI should not be re-imposed. All State Governments who had responded had reservation and had stated that they would support reimplementation of ban. They have furnished their reasons and grounds for the same. Decision of the Central Government under Section 3(1) of the Act is an administrative decision and not a judicial decision.

Evidence and e-mails

322. SIMI has been declared to be a terrorist organization and is included to the First Schedule to the Act. This declaration has not been challenged before any court at any time. In this regard, it may be appropriate to refer to the following observations of the Supreme Court in the case of *Zameer Ahmed Vs. State of Maharashtra* (2010) 5 SCC 246 :-

“72. The precise reason why we have extracted the list of terrorist organizations under UAPA hereinbefore is to bring to the fore the contrast between the two legislations which are in question before us. The exhaustive list of terrorist organizations in the First Schedule to UAPA has been before us. The exhaustive

list of terrorist organizations in the First Schedule to UAPA has been included in order to show the type and nature of the organizations contemplated under the Act. A careful look of the same would indicate that all the organizations mentioned therein have as their aims and objects undermining and prejudicially affecting the integrity and sovereignty of India.....

XXXXX

77. The offence of terrorist act under Section 15 and the offence of unlawful activity under Section 2(1)(o) of UAPA have some elements in commonality. The essential elements in both is the challenge or threat or likely threat to the sovereignty, security, integrity and unity of India. While Section 15 requires some physical act like use of bombs and other weapons etc, Section 2(1)(o) takes in its compass even written or spoken words or any other visible representation intended or which supports a challenge to the unity, sovereignty, integrity and security of India..”

323. Even if we completely disregard and do not take into account confessional statements recorded under Section 161 Cr.P.C. or the interrogation reports of the police, there is sufficient material to show and establish both existence and continuance of SIMI as well as indulgence in unlawful activities by the office bearers and members, if not for and on behalf of SIMI. After the first ban on 27th September, 2001 SIMI has gone underground and it is operating in a clandestine manner.

324. Bomb blasts in different parts of India during the period post 2007 is a matter of public knowledge. The details of bomb blasts are as under :

- (1) Jaipur : On 13th May, 2008 in which 70 persons were killed and 186 were injured.
- (2) Bengaluru : On 5th July, 2008, bomb blasts took place in Bengaluru city and 8 FIRs were registered.
- (3) Ahmedabad: On 26th July, 2008, when 56 people were killed and 240 persons suffered grievous and serious injuries. Surat city : between 27th July, 2008 and 8th September, 2008, 29 live bombs were defused and two cars loaded with bombs were also found.
- (4) Delhi: on 13th September, 2008, when 26 persons were killed and 133 persons received injuries in various bomb blasts. Some IEDs were also found and were defused.

325. Connected with these bomb blasts in Ahmadabad, Delhi, Jaipur and Bengaluru city and recovery of IEDs at Surat, five e-mails were sent to the media. Again, the dates on which these e-mails were sent cannot be disputed and denied as it is a matter of public knowledge. The contents of the e-mails disclose that these were sent by the persons who had planted the bombs and no one else. In these e-mails, certain specific details and even photographs or video clips of the bombs or the vehicles/cycles used are shown. Obviously, these pictures were taken before the bomb blasts actually took place. These e-mails were sent either immediately before or after the bomb blasts had taken place. The question whether the police has done proper investigation in this regard is not wholly material and relevant for the purpose of the present limited inquiry. Further, there can be hardly any doubt about the source, i.e. wifi or the computer used to send these e-mails.

326. The e-mails along with their headers are part of the charge sheet dated 17th December, 2008 filed along with the affidavit of PW-10, Mr. Sanjeev Kumar Yadav. The first e-mail dated 23rd November, 2007 sent to media channels was in respect of blasts in courts of Uttar Pradesh. This e-mail states that Gujarat riots of 2002 have forced them (the author of the e-mail) to take a strong stand against injustice and all other wounds. It was alleged that this is a war of civilization between two communities and they want to empower the society from injustice and corruption. The second e-mail dated 14th May, 2008 was in respect of Jaipur blast on 13th May, 2008. The third e-mail dated 26th July, 2008 was regarding the Ahmadabad and Surat blasts. The fourth e-mail sent on 23rd August, 2008 was again regarding Gujarat blasts. This e-mail has photographs of the cars, which were used in the said blasts. The fifth e-mail was received only a few minutes after the blasts in Delhi on 13th September, 2008. This e-mail was sent to a number of e-mail IDs. The covering letter received from a TV channel is also enclosed.

327. Mr. Ashok Aggarwal, Advocate had referred to the e-mail dated 23rd November, 2007 in which the words “Bismillah-Ar-Rahmanir-Raheem” are used. Some other documents were also referred to where different spellings were used. He has also referred to the last portion of this e-mail and drew my attention to the words “Allah-O-Akbar” and some other documents wherein the words “Allah-Hu-Akbar” were used. It was submitted that these phrases/words have been misspelled and no Muslim can misspell the said words. Per contra, it is submitted on behalf of the Central Government that this is merely an assumption. English is an imperfect language and names and words are spelt differently by different people. My attention was drawn to the internet print outs wherein the words “Bismillah-Ar-Rahmanir-Raheem” have been spelled in different ways and it is stated that all of them are correct. There is merit in the contention raised by the Central Government.

328. The e-mails speak for themselves. As they are extremely offensive, I refrain from reproducing them in my report. However, they may be treated as part of this report. Two relevant portions which make specific reference to SIMI are quoted below.

329. A portion of the e-mail dated 26th July, 2008 reads:-

"We call you, O Hindus, O enemies of Allah, to take an honest stance with yourselves lest another attack of Ibn-e-Qasim sends shivers down your spines, lest another Ghauri shakes your foundation, and lest another Ghaznawi massacres you, proving your blood to be the cheapest of all mankind! Have you forgotten your history full of subjugation, humiliation, and insult? Or do you want us to repeat it again? Take heed before it is too late!"

(a) You agitated our sentiments and disturbed us by arresting, imprisoning, and torturing our brothers in the name of SIMI and the other outfits in Indore, Ujjain, Mumbai, and in other cities of Karnataka. We hereby notify you, especially the ATS and the STF and the governments of Madhya Pradesh and Andhra Pradesh, to release them all, lest you become our next targets and victims of our next attack. Don't consider us heedless about the crimes you have committed in recent Indore riots and all this will be, Insha-Allah brought to account very soon.

(b) We warn the Andhra Pradesh government, specifically the Hyderabad Police, to release the imprisoned Muslim youth immediately, and to be wise with yourselves. We are watching you, and our ground-work to gun you down has already begun. Insah-Allah, we will be rid of you very soon." (emphasis supplied)

330. A portion of the e-mail dated 23rd August, 2008, reads:—

"..... To make it plainer to you, the Indian Mujahideen (IM only) is in no way associated with the Students Islamic Movement of India (SIMI). We are an absolutely self-reliant and self sufficient group with each and every individual committed only to the cause of Islam and Jihad, with our fundamentals of intense hostility to kufr (disbelief) and utmost affection for Muslims. The more you harass us by your countrywide arrests and tortures in the name of SIMI, the more you assist us to accomplish our targets. This is only going to smooth the progress of our fight against you and add to your agony. Your oppression can by no means stop our advance.

Our heartfelt gratitude to Mr. Ken Heywood and his associate for their complete cooperation and guidance to make our attack a huge success.

The Times of India, we warn again, that your untrue and deceptive propaganda against SIMI and your bogus bragging about ATS is definitely going to lead you to the bloodiest massacre ever witnessed by history. Just hold on! The count down to your devastation has begun." (emphasis supplied)

331. The two e-mails (i.e. e-mails dated 26th July, 2008 and 23rd August, 2008) make specific reference to SIMI. There is merit in the contention of the Central Government that this is because most of the members of Indian Mujahideen are from SIMI as repeatedly stated by the witnesses. The fourth e-mail specifically states that if more countrywide arrests are made in the name of SIMI, the more the government would assist them in their target. It was a warning to the government. The fourth e-mail warns a newspaper against the alleged untrue and deceptive propaganda against SIMI.

332. It was stated that these e-mails cannot be relied upon as these are in different sizes and pages. The difference in size is due to font etc. The contents of the e-mails filed by different witnesses are the same and identical.

333. Arrest of Safdar Nagori and the recoveries made from him at the time of arrest and thereafter also reflect that members of SIMI have been engaged in unlawful activities and SIMI continues to exist though underground and in a clandestine manner. Safdar Nagori was Secretary of SIMI on the date when it was banned and thereafter absconded and evaded arrest till he was arrested in March, 2008.

334. In addition, we have recovery of various evidence in form of digital, written and printed material recovered in several States which are related to SIMI and connected with SIMI. These materials were found and seized post 2007. As held above, it is not possible to believe that this material was printed prior to the ban but was kept and retained for over seven years. Further, even retaining this material shows that there was objective and purpose behind keeping the said material. We have recoveries of weapons etc. made on the basis of disclosure statements and statements recorded under MCOCA. Though MCOCA is not strictly applicable, but these statements carry more evidentiary value and weight (see, evidence of Mr. Ashok Tukaram Duraphe (PW-38). The Central Government has relied on statement of Naveed Ahmad PW 56/A-1, recorded under Section 164 Cr.P.C. We also have the judgment of conviction under the Act dated 15.2.2010 filed by Hari Shankar Tiwari (IW 101) and the judicial order dated 8.2.2010 filed by PW 29 Punjabrao Deshmukh.

335. It was submitted on behalf of Mr. Misbahul Islam and Mr. Human Ahmad Siddiqui that there was no independent verification of membership of SIMI. This argument has to be rejected. After SIMI was banned in 2001, it does not function and operate in open. Obviously, it will not be maintaining a list of members, which is open to scrutiny and can be examined. Operations are clandestine and underground. They cannot be unearthed except on the basis of interrogation and statements by persons who are associated with SIMI. Accomplices in such cases are rare and members of public do not come forward out of fear. Central Government, therefore, *pér se* has to rely upon the reports submitted by various State Governments including intelligence agencies. Direct evidence in such cases is difficult to procure and get.

336. The proceedings before this Tribunal are a lis and have to be decided on the basis of preponderance of probability. Union of India has led evidence and the police officers have come in the witness box and have been cross-examined. Mr. Humam Siddiqui and Mr. Misbahul Islam have not entered the witness box and have not led any evidence. They were content and satisfied by cross-examination of witnesses but were reluctant to get themselves examined. Witnesses produced by the Central Government have named SIMI and their members alongwith documents, in form of recoveries of various kinds and statements. Mr. Humam Siddiqui and Mr. Misbahul Islam did not lead evidence to rebut their statements. No evidence has been lead by them. It is apparent from the cross-examination that they have sufficient information, if not substantial information and details about the criminal cases relied upon by the Central Government. The proceedings before this Tribunal are civil in nature and the standard of proof is the standard prescribed by the Supreme Court in *Jamait-e-Islami Hind (supra)*. This lis has to be decided by objectively examining which version is more acceptable and credible. In this regard, reference may be made to following observation made in para 30 of *Jamait-e-Islami Hind (supra)*, which reads:

“30. The allegations made by the Central Government against the Association — Jamaat-E-Islami Hind — were totally denied. It was, therefore, necessary that the Tribunal should have adjudicated the controversy in the manner indicated. Shri Soli J. Sorabjee, learned counsel for the Association, Jamaat-E-Islami Hind, contended that apart from the allegations made being not proved, in law such acts even if proved, do not constitute “unlawful activity” within the meaning of that expression defined in the Act. In the present case, the alternative submission of Shri Sorabjee does not arise for consideration on the view we are taking on his first submission. The only material produced by the Central Government to support the notification issued by it under Section 3(1) of the Act, apart from a resume based on certain intelligence reports, are the statements of Shri T.N. Srivastava, Joint Secretary, Ministry of Home Affairs and Shri N.C. Padhi, Joint Director, IB. Neither Shri Srivastava nor Shri Padhi has deposed to any fact on the basis of personal knowledge. Their entire version is based on official record. The resume is based on intelligence reports submitted by persons whose names have not been disclosed on the ground of confidentiality. In other words, no person has deposed from personal knowledge whose veracity could be tested by cross-examination. Assuming that it was not in public interest to disclose the identity of those persons or to produce them for cross-examination by the other side, some method should have been adopted by the Tribunal to test the credibility of their version. The Tribunal did not require production of those persons before it, even in camera, to question them and test the credibility of their version. On the other hand, the persons to whom the alleged unlawful acts of the Association are attributed filed their affidavits denying the allegations and also deposed as witnesses to rebut these allegations. In such a situation, the Tribunal had no means by which it could decide objectively, which of the two conflicting versions to accept as credible. There was thus no objective determination of the factual basis for the notification to amount to adjudication by the Tribunal, contemplated by the statute. The Tribunal has merely proceeded to accept the version of the Central Government without taking care to know even itself the source from which it came or to assess credibility of the version sufficient to inspire confidence justifying its acceptance in preference to the sworn denial of the witnesses examined by the other side. Obviously, the Tribunal did not properly appreciate and fully comprehend its role in the scheme of the statute and the nature of adjudication required to be made by it. The order of the Tribunal cannot, therefore, be sustained.” (emphasis supplied)

337. Thus, on the basis of evidence led by the parties and evaluating the same, it is held that conditions of Section 2(p)(i) and (ii) of the Act are satisfied in the present case.

338. In view of the aforesaid findings, it is held that there is sufficient cause for declaring Students Islamic Movement of India as an unlawful association and an order is passed under Section 4(3) confirming the declaration made in the Notification of the Ministry of Home Affairs S.O. No. 260(E) dated 5th February, 2010, read with the Notification S.O. No. 544(E) dated 5th March, 2010, issued under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967.

SANJIV KHANNA, J.
UNLAWFUL ACTIVITIES
(PREVENTION) TRIBUNAL

ANNEXURE ISTATEWISE DETAILS OF CASES REGISTERED AGAINST SIMI BEFORE 7th FEBRUARY 2003

Sl. No.	F.I.R. No.	Section/Act
ANDHRA PRADESH		
1.	51/2001 dt. 30.9.2001, PS-Kalapatthar	u/s 153A, 153B IPC and section 10, 13(1)(b) r/w 3 of Unlawful Activities (Prevention) Act 1967
2.	52/2001 dt. 30.9.2001, PS-Kalapatthar	u/s 10 r/w 3 of Unlawful Activities (Prevention) Act 1967
3.	54/2001 dt. 2.1.2001 Kalapatthar PS-Hyderabad	u/s 10 r/w 3 Unlawful Activities (Prevention) Act 1967
4.	55/2001 dt. 2.10.2001 PS-Kalapatthar	u/s 153 (A)(B) IPC and 10, 13(1)(b) r/w 3 of Unlawful Activities (Prevention) Act 1967
5.	835/2002 dt. 21.11.2002, PS-Saroor Nagar	u/s 302, 307 IPC and 3, 4, 5 ES Act and Section 3(3) of POT Act
6.	618/2004 dt. 30.8.2004; PS-CCSDD, Hyderabad	u/s 120B, 379, 153A IPC, Section 5,7,6 of ES Act and Section 25 and 27 I.A. Act 7
7.	882/2004 dt. 31.10.2004, PS-Saifabad	u/s 147, 148, 307, 332, 224, 427 and 149 IPC
8.	410/2004 dt. 1.11.2004, PS-Saidabad	u/s 147, 148, 335, 307, 427 I.P.C. Sec. 3, 5 & 8 ES Act.
9.	1037/2005 dt. 12.10.2005, PS-Panjagutta	u/s 302, 307, 120B IPC, 3 & 5 ES Act
10.	100/2007 dt. 18.5.2007 PS-Husaini Alam (AP)	u/s 302, 307, 120B IPC and section 3 & 5 of ES Act
11.	198/2007 dt. 15.6.2007 PS-Gopalpuram	u/s 120B, 125, 126 IPC
12.	21/2008 dt. 10.1.2008, PS-Chandigarh	u/s 427 IPC
13.	40/2001 dt. 29.9.2001 Vijayapuri South PS	u/s 7, 10, 13 of Unlawful Activities (Prevention) Act 1967
14.	81/2001 dt. 2.10.2001 Narsapur PS	u/s 10 Unlawful Activities (Prevention) Act 1967.
DELHI		
1.	269/2001 dt. 19.5.2001, PS-New Friends Colony	u/s 124A/153A/153B/505(1)B & C IPC
2.	304/2001 dt. 31.7.2001, PS-Kamla Market	u/s 121/121A/122/123/120B IPC & 4 & 5 Exp. Substances Act
3.	532/2001 dt. 28.09.2001 P.S.-New Friends Colony, New Delhi	u/s 3, 10, 13 Unlawful Activities (Prevention) Act 1967 and Sections 124A, 153A, 120A I.P.C.
4.	13/2002 dt. 27.5.2002, P.S.-Special Cell, Lodhi Colony	u/s 3, 10, 13 Unlawful Activities (Prevention) Act 1967 and sections 124A, 120B I.P.C. and 3/20 of POT Act
5.	40/2005 dt. 05.3.2005, PS- Special Cell, Lodhi Colony New Delhi	u/s 121/121A/122/123/120B IPC and 4/5 Exp. Substances Act, 25 Arms Act 18/20 Unlawful Activities (Prevention) Amendment Ordinance 2004.
6.	4/07 dated 25.1.2007 PS Special Cell, New Delhi	u/s 121/121-A/122/123/120B IPC 4/5 Explosive Substances Act & 18/20/21/23 of Unlawful Activities (Prevention) Act 1967
7.	161/06 dated 8.3.06 PS Narela, Delhi	u/s 307/186/353/489-B & C/34 IPC, 4/5 of Explosive Substance Act, 25/27 Arms Act & 17/18/20/23 of Unlawful Activities (Prevention) Act 1967.
GUJARAT		
1.	3232/1998 dt. 6.12.1998, PS-Karanj P. Stn. II	u/s 153(B1)(C), 295 I.P.C.
2.	3054/1999 dt. 20.3.1999, PS-Gaykhwad Haveli P. Stn. II	u/s 153(B), 114 I.P.C.
3.	3346/2000 dt. 2.12.2000, PS-Gaykhwad Haveli P. Stn. II	u/s 153(B), 188 IPC and 131, 33(5) BP Act.
4.	3131/2000 dt. 31.5.2000, PS-Shahpur Pst. II	u/s 135(A) 1(A), 114 I.P.C.
5.	3044/2001 dt. 11.3.2001, PS-Rakhiyal Pst. II	u/s 153A, 188 and 144 of I.P.C.
6.	68/2001 dt. 11.4.2001, PS-Bhuj City Pst. I	u/s 143, 147, 353, 505 I.P.C. and 131 BP Act
7.	221/2001 dt. 30.9.2001, PS-Karanj Pst. I	u/s 143, 147, 148, 186, 153, 332, 188 IPC, Section 13 of Unlawful Activities (Prevention) Act 1967 and 135(3) BP Act
8.	16/2003 dt. 11.12.2003, PS-DCB Pst. I, Ahmedabad City	u/s 120B, 121, 121B, 122 IPC and 25(1)(A), 29 Arms Act
9.	894/2003 dt. 12.11.2003, PS-Satellite Pst. I, Ahmedabad City	u/s 307, 120B, 121, 121B, 122, 123 I.P.C., section 3 & 4 of the Damage of Public Property Act and section 3 & 4 of Explosive Substances Act and 17, 18, 19, 20, 23(1), 38, 39, 40 Unlawful Activities (Prevention) Amendment Act 2004

10. 442/2001 dt. 28.12.2001, PS-Surat City Athwa Pst. II u/s 3, 10, 13, 15 of Unlawful Activities (Prevention) Act 1967.

11. 27/2002 dt. 27.1.2002, PS-Sayajiganj Ps. II, Vadodara City u/s 188, 153 (2)(1)(abc) IPC and Unlawful Activities (Prevention) Act 1967

12. 1/2006 dt. 3.2.2006, PS-ATS, Ahmedabad u/s 120B, 121A, 122, 123 IPC, Indian Arms Act, Section 4 Explosive Substances Act and Section 17, 18, 19, 20, 23 (1), 38, 39 of Unlawful Activities (Prevention) Amendment Act 2004.

13. 2/2006 dt. 18.5.2006, PS-ATS, Ahmedabad u/s 120B, 121, 121A, 122, 123 of IPC, 4 & 5 of Explosive Substance Act 1908 & section 17, 18, 19, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act 1967

14. 52/2006 dt. 19.2.2006, Ahmedabad. W. Railway PS u/s 307, 326, 324, 427, 120(B), 121, 121A, 122, 123, 119, 187, 217 of IPC and Prevention of Damages of Property Act 1984, Section 3 & 4 of Explosive Substances Act, 1908 and sections 3, 7, 16, 17, 18, 19, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act 1967

KARNATAKA

1. 110/2001 dt. 28.9.2001, PS-Gulbarga Roza u/s 124A, 153A, 149 of I.P.C.

2. 335/2001 dt. 28.9.2001, PS-Bijapur Town, Gandhi Chowk u/s 10, 11, 13 of Unlawful Activities (Prevention) Act 1967

3. 126/2001 dt. 28.9.2001, PS-Bijapur Golgumbaz u/s 10, 11, 13 of Unlawful Activities (Prevention) Act 1967

4. 353/2001 dt. 28.9.2001, PS-Bijapur Town, Gandhi Chowk u/s 10, 11, 13 of Unlawful Activities (Prevention) Act 1967

KERALA

1. 244/2001 dt. 28.9.2001, PS-Chevayoor, KKD City u/s 10 of Unlawful Activities (Prevention) Act 1967

2. 95/2001 dt. 28.9.2001, PS-Beypore u/s 10 of Unlawful Activities (Prevention) Act 1967

3. 236/2001 dt. 28.9.2001, PS-Nallalam, KKD City u/s 10 of Unlawful Activities (Prevention) Act 1967

4. 237/2001, PS-Town, KKD City u/s 10 of Unlawful Activities (Prevention) Act 1967

5. 243/2001, dt. 5.10.2001, PS-Town, KKD City u/s 10 of Unlawful Activities (Prevention) Act 1967

6. 134/2001 dt. 27.9.2001, PS-Panniyankara, KKD City u/s 10 of Unlawful Activities (Prevention) Act 1967

7. 133/2001 dt. 28.9.2001, PS-Kunnarnangalam, KKD City u/s 10 of Unlawful Activities (Prevention) Act 1967

8. 738/2001 dt. 29.9.2001, PS-Perintha-imanna, MLPM City u/s 10 of Unlawful Activities (Prevention) Act 1967

9. 607/2001 dt. 29.9.2001, PS-Kondotty, MLPM u/s 10 of Unlawful Activities (Prevention) Act 1967

10. 215/2001 dt. 29.9.2001, PS-Melattoor, MLPM u/s 10 of Unlawful Activities (Prevention) Act 1967

11. 533/2001 dt. 29.9.2001, PS-Tirur,MLPM u/s 10 of Unlawful Activities (Prevention) Act 1967

12. 328/2001, dt. 29.9.2001, PS-Kottakal, MLPM u/s 10 of Unlawful Activities (Prevention) Act 1967

13. 377/2001 dt. 27.9.2001, PS-Chavakkad, Thrissur u/s 151 Cr.PC

14. 685/2001 dt. 27.9.2001, PS-Perumbavoor, EKM u/s 10 of Unlawful Activities (Prevention) Act 1967

15. 364/2001 dt. 27.9.2001, PS-Alappuzha u/s 151 Cr.PC

16. 366/2001 dt. 27.9.2001, PS-Erattupetta, Kottayam u/s 151 Cr.PC

17. 68/2002 dt. 5.2.2002, PS-Kondotty, Malapuram u/s 10 of Unlawful Activities (Prevention) Act 1967

18. 159/2006 dt. 15.08.2006, PS-Binanipuram, Kottayam u/s 120B, 124A I.P.C.,10 &13(i)(b) Unlawful Activities (Prevention) Act 1967

MADHYA PRADESH

1. 216/1997 dt. 4.12.1997, PS-Khajrana, Indore u/s 153A, 120B IPC

2. 307/2000 dt. 22.10.2000, PS-Khajrana, Indore u/s 153A IPC

3. 333/2000 dt. 7.11.2000, PS-Khajrana, Indore u/s 153A IPC

4. 339/2000 dt. 12.11.2000, PS-Khajrana, Indore u/s 153A, 188 IPC

5. 251/2001 dt. 29.7.2001, PS-Khajrana, Indore u/s 188 IPC

6. 293/1999 dt. 3.12.1999, PS-Choti Gwaltoli, Indore u/s 153A IPC

7. 380/2000 dt. 23.10.2000, PS-Chhoti Gwaltoli, Indore u/s 153A IPC

8. 131/2000 dt. 27.5.2001, PS-Chhoti Gwaltoli, Indore u/s 153A IPC

9. 405/2000 dt. 4.11.2000, PS-Choti Gwaltoli, Indore u/s 153A IPC

10. 420/2000 dt. 13.11.2000, PS-Choti Gwaltoli, Indore u/s 153A, 188 IPC

11. 461/1999 dt. 3.12.1999, PS-MG Road, Indore u/s 153 IPC

12. 451/2000 dt. 6.11.2000, PS-MG Road, Indore u/s 153A IPC

13. 572/2000 dt. 21.10.2000, PS-Juni, Indore u/s 353, 153 IPC

14. 668/2000 dt. 22.10.2000, PS-Chatripura, Indore u/s 153B IPC

15. 59/1999 dt. 8.2.1999 PS-Aishbagh, Bhopal u/s 153B IPC

16. 68/2000 dt. 11.2.2000 PS-Kohefiza, Bhopal u/s 153 IPC

17. 537/2000 dt. 22.10.2000 PS-Talaiya, Bhopal	u/s 153A, B IPC and 10 Unlawful Activities (Prevention) Act 1967
18. 663/2000 dt. 22.10.2000 PS-Shahjahanabad, Bhopal	u/s 153A, B IPC
19. 358/2000 dt. 24.10.2000, PS-Moghat Road, Bhopal	u/s 153A IPC
20. 417/2000 dt. 1.10.2001, PS-Moghat Road, Bhopal	u/s 153A IPC
21. 435/2000 dt. 24.10.2000, PS-Kotwali, Bhopal	u/s 153A IPC
22. 250/2001 dt. 28.5.2001, PS-Siwani, Siwani	u/s 153A, B, 295A IPC
23. 637/1998 dt. 3.12.1998, PS-Gohalpur, Jabalpur	u/s 153A, IPC
24. 222/2001 dt. 26.4.2001, PS-Gohalpur, Jabalpur	u/s 153B, IPC
25. 564/2001 dt. 21.9.2001, PS-Sajapur, Sajapur	u/s 153A, IPC
26. 354/2000 dt. 20.10.2000, PS-Jiwaji Ganj, Ujjain	u/s 153A, IPC
27. 436/2000 dt. 20.10.2000 PS-Chimanganj, Ujjain	u/s 153A, IPC
28. 151/2000 dt. 20.10.2000 PS-Kharakuwan, Ujjain	u/s 153A, IPC
29. 588/1997 dt. 5.12.1997 PS-Mahakal, Ujjain	u/s 153A, IPC
30. 462/1998 dt. 8.11.1998, PS-Mahakal, Ujjain	u/s 153A, IPC
31. 525/2000 dt. 20.10.2000, PS-Mahakal, Ujjain	u/s 153A, IPC
32. 82/2000 dt. 21.2.2000, PS-Nagda, Ujjain	u/s 295A, IPC
33. 479/2001 dt. 28.9.2001, PS-Aerodrum, Indore	u/s 10 Unlawful Activities (Prevention) Act 1967
34. 304/2001 dt. 27.9.2001, PS-Khajrana, Indore	u/s 10 Unlawful Activities (Prevention) Act 1967
35. 305/2001 dt. 27.9.2001, PS-Khajrana, Indore	u/s 13 Unlawful Activities (Prevention) Act 1967
36. 308/2001 dt. 30.9.2001, PS-Khajrana, Indore	u/s 13 Unlawful Activities (Prevention) Act 1967
37. 316/2001 dt. 06.10.2001, PS-Khajrana, Indore	u/s 10 Unlawful Activities (Prevention) Act 1967
38. 399/2001 dt. 1.10.2001, PS-MG Road, Indore	u/s 10, 13 Unlawful Activities (Prevention) Act 1967
39. 401/2001 dt. 02.10.2001, PS-MG Road, Indore	u/s 10 Unlawful Activities (Prevention) Act 1967
40. 420/2001 dt. 12.10.2001, PS-MG Road, Indore	u/s 10 Unlawful Activities (Prevention) Act 1967
41. 288/2001 dt. 18.10.2001, PS-Choti Gwaltoli, Indore	u/s 10 Unlawful Activities (Prevention) Act 1967
42. 251/2001 dt. 28.09.2001, PS-Choti Gwaltoli, Indore	u/s 10, 13 Unlawful Activities (Prevention) Act 1967
43. 250/2001 dt. 27.9.2001, PS-Choti Gwaltoli, Indore	u/s 10 Unlawful Activities (Prevention) Act 1967
44. 253/2001 dt. 29.9.2001, PS-Choti Gwaltoli, Indore	u/s 10 Unlawful Activities (Prevention) Act 1967
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81. 314/2006 dt. 2.8.2006, PS-Kotwali, Siwan	u/s 124A, 153A, 153B, 295A, 3 and 4 IPC and 3, 10, 13 Unlawful Activities (Prevention) Act 1967
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 76. Spl. AC 877/2001, PS-Park Site, Mumbai City
 77. LAC No. 1692/2001, PS-Dharavi, Mumbai City
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 79. Spl. LAC 27/2001, PS- Andheri, Mumbai City
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87. LAC No. 4/2006 dt. 29.7.2006, PS-ATS Mumbai

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4. 327/2001 dt. 27.9.2001, PS-Englishbazar, Malda u/s 153A, 153(B), 121(A), 124(A) IPC
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CASES REGISTERED AGAINST SIMI ACTIVISTS AFTER 7TH FEBRUARY, 2008

Sl. F.I.R. No. No.	Section/Act
	ANDHRA PRADESH
1. 73/2008 dt. 5.3.2008, PS-Saidabad (AP)	u/s 147, 148, 458, 333, 384, 506 r/w 149 IPC Section 7 CRLA and 3 & 4 PDPP Act
2. 213/2008 dt. 1.9.2008, PS-SIT, Hyderabad	u/s 120(B), 124A, 125 and 126 of IPC
3. 358/2008 dt. 3.12.2008, of Kanchanbagh PS	u/s 307, 324 IPC and 25(1)(A) Arms Act r/w 34 IPC
4. 157/2009 dt. 18.5.2009, PS-Falaknuma, Hyderabad	u/s 302, 307 IPC, 25 & 27 of Arms Act, 1959 r/w 34 of IPC
	DELHI
1. 166/2008 dated 13.9.2008, PS-Karol Bagh, Delhi	u/s 302/307/323/121 IPC 3/4/5 Explosive Substances Act, & 10/ 12/13 of Unlawful Activities (Prevention) Act, 1967
2. 130/2008 dated 13.9.2008, PS-Greater Kailash New Delhi	u/s 3/4/5 Explosive Substances Act & 12/13 of Unlawful Activities (Prevention) Act, 1967, 307/323/12120-B/427 IPC
3. 418/2008 dated 13.9.2008, PS-Connaught Place, New Delhi (Bara Khamba Road)	u/s 302/307/121/121A/120 IPC 3/4 Explosive Substances Act & 13 of Unlawful Activities (Prevention) Act, 1967
4. 419/2008 dated 13.9.2008, PS-Connaught Place, New Delhi (Central Park)	u/s 302/307/323/121/121A/120 IPC 3/4 Explosive Substances Act & 13 of Unlawful Activities (Prevention) Act, 1967
5. 293/2008 dated 13.9.2008, PS-Tilak Marg, New Delhi	u/s 120/120B/121/121A/122/123 IPC & 4/5 Explosive Substances Act
	GUJARAT
1. 236/2008 Shahibaug PS-I	u/s 120B, 121, 122, 302, 307, 326, 427 IPC and u/s 3, 7 of Exp. Sub. Act and u/s 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
2. 206/2008 Maninagar PS-I	u/s 307, 326, 120B, 427, 124A, 121A, 122, 153A IPC and u/s 3, 4, 5, 6, 7 of ES Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967 and u/s 3, 4 of Damages of Public Property Act
3. 273/2008 Amraiwadi PS-I	u/s 307, 120B, 121, 121A, 122, 153A IPC and u/s 3, 4, 5, 6, 7 of Explosive Substances Act and u/s 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
4. 400/2008 Naroda PS-I	u/s 120B, 121, 121A, 122, 153A, 307 of IPC, 4, 5, 6, 7 of Explosives Substances Act, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
5. 401/2008 Naroda PS-I	u/s 120B, 121, 121A, 122, 153A, 302, 307 of IPC, 3, 4, 5, 6, 7 of Explosives Substances Act 15, 16, 18, 20 of Unlawful Activities (Prevention) Act 1967
6. 220/2008 Bapunagar PS-I	u/s 302, 307, 120B, 121, 121A, 122, 153A, 127, 124A of IPC and u/s 3, 4, 5, 6, 7 of Exp. Sub. Act and 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967

7. 203/2008 Maninagar PS-I	u/s 302, 307, 120B, 124A, 121A, 122, 153A IPC and u/s 3,4,5,6,7 of Explosive Substances Act and 3, 4 of Damages to Public Property Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
8. 204/2008 Maninagar PS-I	u/s 307, 120B, 124A, 121A, 122, 153A IPC and u/s 3, 4, 5, 6, 7 of Explosive Substances Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
9. 205/2008 Maninagar PS-I	u/s 307, 120B, 124A, 121A, 122, 153A IPC and u/s 3, 4, 5, 6, 7 of Explosive Substances Act and u/s 3, to, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
10. 71/2008 Khadia PS-I	u/s 302, 307, 120B, 121, 121A 122, 153A, 127 of IPC and 3, 4, 5, 6, 7 of Explosives Substance Act & 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
11. 140/2008 Danilimda PS-I	u/s 302, 307, 337, 120B, 121, 121A, 122, 153A, 124(A); 34, 427 1PC and 3, 4, 5, 6, 7 of ES act and u/s 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
12. 123/2008 Kalupur PS-I	u/s 307, 120B, 121, 121A, 122, 153 of IPC and 3,4,5,6,7 of ES Act and u/s 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
13. 218/2008 Vatwa PS-I	u/s 307, 333, 12011, 121, 121A, 122, 153A, 124A IPC and u/s 3, 4, 5, 6, 7 of ES Act u/s15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
14. 321/2008 Ramol PS-I	u/s 302, 307, 326, 324, 120B, 212, 121A, 122, 153A IPC and u/s 3, 4, 5, 6, 7 of ES Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act 1967
15. 322/2008 Ramol PS-I	u/s 153, 153A, 120B, 121, 121A, 124A, 427IPC and 3,4,5,6 of ES Act u/s 3, 10, 13, 15,16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
16. 190/2008 Ishanpur PS-I	u/s 302, 307; 120B, 121, 121A, 124A, 427 of IPC and u/s 3, 4, 5, 6,7 of ES Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
17. 338/2008 Odhav PS-I	u/s 307, 120B, 121A, 122, 123, 153A of IPC and u/s 3, 4, 5, 6, 7 of ES Act and u/s 3, 10, 13, 15,16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
18. 339/2008 Odhav PS-I	u/s 307,120B, 121A, 122, 123, 153A of IPC and u/s 3, 4, 5, 6, 7 of ES Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
19. 200/2008 Kalol Taluka PS-I	u/s 120B, 121, 121A, 123, 124A of IPC and u/s 4, 5,7 of ES Act and u/s . 3, 4 of Prevention of Damages to Public Property Act and u/s 17, 18, 19, 23(1), 20, 38, 39 of Unlawful Activities (Prevention) Act, 1967
20. 181/2008 Sarkhej PS-I	u/s 302, 307, 337, 338; 120B, 121, 121A of IPC and u/s 3, 4, 5, 6 of ES Act and u/s 3,4 of Prevention of Damages to Public Property Act and u/s 16, 18 of Unlawful Activities (Prevention) Act, 1967.
21. 175/2008 Kapodra PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15,16,18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
22. 176/2008 Kapodra PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15,16,18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I. T. Act
23. 179/2008 Kapodra PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15,16,18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act

24. 180/2008 Kapodra PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
25. 363/2008 Varacha PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
26. 364/2008 Varacha PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
27. 365/2008 Varacha PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
28. 366/2008 Varacha PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
29. 367/2008 Varacha PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
30. 208/2008 Mahedhpura PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
31. 209/2008 Mahedhpura PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
32. 203/2008 Katargam PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
33. 208/2008 Katargam PS	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
34. 3019/2008 DCB	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
35. 651/2008 Umara	u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
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1. 05/2008, dt: 11.1.08 Honnali PS Davangere District (Case merged with 14/2008)	u/s 102 Cr.PC and 379, 120(B), 123(A), 511 IPC, Sections 10, 12, 13 of Unlawful Activities (Prevention) Act, 1967 r/w Section 4 & 5 Explosive Substances Act, Section 7 of the Indian Arms Act.
2. 14/2008 dt. 30.1.2008 Gokul Road PS Hubli Dharwad City	u/s 41(d), 102 Cr.PC and 120(B), 121, 121(A) 122, 124(A), 153A & B(1), 379, 116, 465, 468, 471, 201, 511 IPC, Sections 10, 12, 13 of Unlawful Activities (Prevention) Act, 1967 and Section 4 & 5 Explosive Substances Act

3. 104/2008 dated 14.05.08 Malamaruthi PS Belgaum Distt. u/s 153(A), 473, 476, 109, 465, 120(B) 511 IPC sections 10,13 of Unlawful Activities (Prevention) Act 1967

4. 88/2008 dt. 27.5.2008 APMC Yard, PS Belgaum Distt. u/s 143, 149, 153(A)(B), 120(B) IPC and sections 13, 18, 15 of Unlawful Activities (Prevention) Act, 1967 & sections 4 & 5 of Indian Explosive Act, 1908

5. 177/2008 dt. 25.7.2008 Kengeri, PS Bangalore City u/s 121, 121(A), 307, 435, 201 IPC, sections 3,4,5,6 Explosive Substances Act, 1908 and 4 of Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act 1967.

6. 92/2008 dt. 25.7.2008 Sampangiram Nagar PS Bangalore City, u/s 120(B), 121, 121A, 307, 324, 201, 435 IPC, sections 3, 4, 5, 6 Explosive Substances Act, 1908 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.

7. 483/2008 dt. 25.7.2008 Madivala, PS Bangalore City u/s 120(B), 121(A), 326, 307, 302, 435, 201 IPC, sections 3, 4, 5, Explosive Substances Act, 1908 and 4, Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.

8. 217/2008 dt. 25.7.2008 Adugodi, PS Bangalore City u/s 120(B), 121(A), 326, 435, 201, 153(A), 307, IPC Sections 3, 4, 5, 6 Explosive Substances Act, 1908 and section 9B, Explosive Act & 4 Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.

9. 260/2008 dt. 25.7.2008 Ashok Nagar, PS Bangalore City u/s 120(B), 121(A), 307, 337, 435, 201, 326 IPC, sections 3, 4, 5, Explosive Substances Act, 1908 and section 4, Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.

10. 261/2008 dt. 25.7.2008 Ashok Nagar, PS Bangalore City u/s 120(B), 307, 121, 121(A), 153(A), 435, 201 IPC, sections 3, 4, 5, Explosive Substances Act, 1908 and section 4 Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.

11. 314/2008 dt. 25.7.2008 Byatarayana Pura PS Bangalore City u/s 120(B), 121, 121(A), 307, 435, 201 IPC, sections 3, 4, 5, 6 Explosive Substances Act 1908 and section 4 Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.

12. 315/2008 dt. 25.7.2008 Byatarayana Pura PS Bangalore City u/s 120(B), 121, 121(A), 307, 435, 201 IPC, sections 3, 4, 5, 6 Explosive Substances Act, 1908 and section 4 Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.

13. 297/2008 dt. 26.7.2008 Koramangala, PS Bangalore City u/s 120(B), 121, 121(A), 201, 506, 307, 511 IPC, sections 3, 4, 5, 6 Explosive Substances Act, 1908 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.

14. 242/2008 dt. 4.10.2008 Ullala, PS Dakshina Kannada Distt. u/s 120(B), 121(A), 122, 123, 153(A), 212, 420, 468, 471 IPC, sections 5, 6 Explosive Substances Act, 1908, section 9 (B)(B) Explosive Act, section 3, 25 of Indian Arms Act and Sections 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.

15. 260/2008 dt. 4.12.2008 Golgumbaj PS Bijapur Distt. u/s 153(A),(B), 120(B), 124(A), 149 IPC and sections 11,13,15,18 of UAPA

KERALA

1. 257/2008 dt. 19.6.2008 Mundakayam Distt. Kottayam u/s 122, 124(a), 153A, 120(b), I.P.C. , 3, 5, 10, 13 of Unlawful Activities (Prevention) Act 1967.

2. 356/2008 dt. 18.10.2008 Kannur Edakkad u/s 3 r/w 13(2) 16,18,38 and 39 of Unlawful Activities (Prevention) Act, 1967, 129(B), 121, 121(A), 134(b), 465, 471 IPC

MADHYA PRADESH

1. 95/2008 dt. 19.4.2008 PS- Kotwali, Bhopal u/s 419, IPC and 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
2. 205/2008 dt. 20.4.2008 PS-Shahjahanbad, Bhopal u/s 419, IPC and Unlawful Activities (Prevention) Act, 1967
3. 244/2008 dt. 4.4.2008, PS-Gohalpur, Jabalpur u/s 3, 10, 13 of Unlawful Activities (Prevention) Act 1967
4. 104/2008 dt. 07.4.2008, PS-Chachoda, Guna u/s 3, 10, 13 of Unlawful Activities (Prevention) Act 1967
5. 180/2008 dt. 8.4.2008, PS-Neemuch, MP u/s 153A, 124A, IPC & 3, 10, 13 (A)(B) of Unlawful Activities (Prevention) Act, 1967
6. 120/2008 dt. 27.3.2008, PS-Pithampur, Dhar, MP u/s 122, 124A, 153A IPC and 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967, 25 & 27 Arm. Act, 3, 5, Explosive Substances Act
7. 202/2008 dt. 1.4.2008, PS-Kotwali, Khandwa, MP u/s 153 IPC and 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967.
8. 142/2008 dt. 5.4.2008, PS-Narshinghgarh, Rajgarh, MP u/s 153 A, I.P.C. and 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
9. 177/2008 dt. 8.4.2008, PS-Biaora, Rajgarh, MP u/s 153(A) (B), IPC and 3, 10, 13 of Unlawful Activities (Prevention) Act 1967
10. 159/2008 dt. 30.3.2008, PS-MG Road, Indore u/s 3, to, 13 of Unlawful Activities (Prevention) Act 1967
11. 184/2008 dt. 30.3.2008, PS- Khajrana, Indore u/s 10, 11, 12, 13 of Unlawful Activities (Prevention) Act 1967
12. 181/2008 dt. 1.4.2008, PS-Aero Drome, Indore u/s 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
13. 101/2008 dt. 2.4.2008, PS-Chhoti Gwalan Toli, Indore u/s 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
14. 129/2008 dt. 2.4.2008, PS-Sadar, Bazar, Indore u/s 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
15. 35/2008 dt. 2.4.2008, PS-Sarafa, Indore u/s 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
16. 192/2008 dt. 7.4.2008, PS-Khajrana, Indore u/s 153, IPC and sections 10,11,13 of Unlawful Activities (Prevention) Act, 1967.
17. 135/2008 dt. 10.4.2008, PS-Sadar Bazar, Indore, MP u/s 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
18. 62/2008 dt. 31.3.2008, PS-Unhel, Ujjain u/s 153A, 124,A IPC and 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
19. 239/2008 dt. 7.4.2008, PS-KoLwali, Sehore, MP u/s 153A, 153B IPC and 13, 10, 13 of Unlawful Activities (Prevention) Act, 1967
20. 302/2008 PS Misrod, Bhopal 19.9.08 u/s 3,10,13 of Unlawful Activities (Prevention) Act, 1967
21. 399/2008 PS Kareli Narsingpur 22.10.08 u/s 3(1),10,13 of Unlawful Activities (Prevention) Act, 1967
22. 523/2008 dt. 22.10.08 PS Kotwali Seoni u/s 3(1);10,13 of Unlawful Activities (Prevention) Act, 1967
23. 200/2008 dt. 11.4.08 PS Juni Indore u/s 3,10,13 of Unlawful Activities (Prevention) Act, 1967
24. 200/2008 dt. 19.8.08 PS-Chhotigwaltoli, Indore u/s 3,10,13 of Unlawful Activities (Prevention) Act, 1967
25. 699/2008 dt. 10.11.08 PS-Mahakal, Ujjain u/s 3,10,13 of Unlawful Activities (Prevention) Act, 1967
26. 5/2009 dt. 21.10.09 PS-STF Bhopal u/s 147, 153 A/B I.P.C. & 3,10,13 of Unlawful Activities (Prevention) Act, 1967.
27. 6/2009 dt. 4.11.2009 PS-STF Bhopal u/s 153 A/B, I.P.C. & 3,10,13(A)(B) of Unlawful Activities (Prevention) Act, 1967
28. 703/2009 dt. 28.11.2009 PS-Moghat Road, Khandwa u/s 302, 379 I.P.C. & 15 & 16A of Unlawful Activities (Prevention) Act, 1967
29. 728/2009 dt. 28.11.2009 PS-Kotwali, Khandwa u/s 302, I.P.C. & 15 & 16A of Unlawful Activities (Prevention) Act 1967
30. 729/2009 dt. 28.11.2009 PS-Kotwali, Khandwa u/s 302, I.P.C. & 15 & 16A of Unlawful Activities (Prevention) Act, 1967

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1. 3036/2008 dt. 1.4.2008, PS-Vijaypur Naka, Solapur City u/s 2(C), 10, 13 of Unlawful Activities (Prevention) Act, 1967
2. 17/2008 dt. 21.8.2008, PS-ATS, Mumbai u/s 10,13 of Unlawful Activities (Prevention) Act 1967, Amendment 2004.
3. 3065/2009 dt. 02.10.2009, PS-Murtijapur, Akola u/s 10,13 of Unlawful Activities (Prevention) Act, 1967.

1. 15/08 dated 23.8.2008 PS- SOG CID(CB)
Rajasthan Jaipur u/s 153A, 120B, IPC and sections 3, 10, 13, 17, 18 of Unlawful Activities (Prevention) Act, 1967..

RAJASTHAN

INDEX NO.1
LIST OF PROSECUTION WITNESSES BEFORE THE UNLAWFUL
ACTIVITIES(PREVENTION) TRIBUNAL-2010

Sr. No.	PW No.	Name of the Officer	(1)	(2)	(3)
			(1)	(2)	(3)
1.	PW-1	Mr. V.K. Akber	34.	PW-34	Mr. Atul Sabnis
2.	PW-2	Mr. S. Sasidaran	35.	PW-35	Mr. Udaysingh Rathod
3.	PW-3	Mr. K.R. Kannan	36.	PW-36	Mr. Milind Bhikaji Khetle
4.	PW-4	Mr. T.K. Vinodkumar	37.	PW-37	Mr. Sadashiv Patil
5.	PW-5	Mr. C.B. Sharma	38.	PW-38	Mr. Ashok Duraphe
6.	PW-6	Mr. Hukam Chand	39.	PW-39	Mr. K.N. Shengal
7.	PW-7	Mr. Govind Sharma	40.	PW-40	Mr. Ajay Kumar Singh
8.	PW-8	Mr. Ramesh Chander Lamba	41.	PW-41	Mr. Narayansinh Bhavansinh Parmar
9.	PW-9	Mr. L.N. Rao	42.	PW-42	Ms. Ushaben Bachubhai Rada
10.	PW-10	Mr. Sanjeev Kumar Yadav	43.	PW-43	Mr. Vinod Ramjibhai Tolia
11.	PW-11	Mr. Sishu Ranjan Pál; Mr. Sishu Ranjan Pal	44.	PW-44	Mr. Mayur Jagmalbhai Chavda
12.	PW-12	Mr. Manish Agarwal	45.	PW-45	Mr. Siddhaisinh Bhati
13.	PW-13	Mr. Rajendra Ojha	46.	PW-46	Mr. Jayanth Vasudev Shetty
14.	PW-14	X	47.	PW-47	Mr. V.V. Kumbar
15.	PW-15	X	48.	PW-48	Mr. V.A. Pujar
16.	PW-16	Mr. Satyendra Singh Ranawat Mr. Satyendra Singh Ranawat	49.	PW-49	Mr. H.M. Omkariah
17.	PW-17	Mr. Thangkhanlal Guite	50.	PW-50	Mr. Jagadish Basalingappa Khot
18.	PW-18	Mr. Ajinath Satpute	51.	PW-51	Mr. S.S. Khot
19.	PW-19	Mr. Satish Desmukh	52.	PW-52	Mr. S. Srinivasa Rao
20.	PW-20	Mr. Dnyaneshwar Ganore	53.	PW-53	Mr. P. Devender
21.	PW-21	Mr. Vishnu Baburao Jagtap	54.	PW-54	Mr. S. John Wesley
22.	PW-22	Mr. Dattatraya Bapurao Patil	55.	PW-55	Mr. K. Srinivasa Rao
23.	PW-23	Mr. Prakash Hingmire	56.	PW-56	Mr. V.N.V. Satyanarayana
24.	PW-24	Mr. Anil Lambate	57.	PW-57	Mr. V.N.V. Satyanarayana
25.	PW-25	Mr. Sunil D. More; Mr. Sunil D. More	58.	PW-58	Mr. V.N.V. Satyanarayana
26.	PW-26	Mr. Sangram Sangle	59.	PW-59	Mr. V.N.V. Satyanarayana
27.	PW-27	Mr. Subhash Panse	60.	PW-60	Mr. V.N.V. Satyanarayana
28.	PW-28	Mr. Chihagan	61.	PW-61	Mr. Chandrashekhar Wagh
29.	PW-29	Mr. Punjabrao Deshmukh,	62.	PW-62	Mr. Vikram Singh Bhadoria
30.	PW-30	Mr. Shivajirao Tambare	63.	PW-63	Mr. M.K. Tiwari
31.	PW-31	Mr. V.D. Satav	64.	PW-64	Mr. Surendra Singh Baghel
32.	PW-32	Mr. Sunil Mane	65.	PW-65	Mr. Shelendra Singh Jadon
33.	PW-33	Mr. Rahimtullah Inayat Sayeed	66.	PW-66	Mr. Ray Singh Narwaria
			67.	PW-67	Mr. D.S. Yadav
					Mr. Yashpal Dabas

Earlier affidavit stands withdrawn. File No. 8A Pages 285 to 427.

* PW-66 was examined in the Chamber and his statement was not recorded.

INDEX NO.2

LIST OF FILES AND INTERROGATORIES WITNESSES BEFORE THE
UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

Sl. No.	File No./ IWNo.	Name of the Officer	Sl. No.	File No./ IWNo.	Name of the Officer
1. 9a		Mr. Khema Ram, Sub-Inspector, SHO P.S. Bapawar Kalan, Distt. Kota (Rural) Raj.	16. 53		Mr. Sanjay Jairam Sonwane, API with SPU, Jalgaon Unit, Maharashtra
2. 9b		Mr. Vinod Singh, ASI, P.S. Kotwali, Distt. Bikaner, Rajasthan	17. 54		Mr. Jagdeo Mahadeo Akhare, SDPO, Washim Distt., Maharashtra (C.R.3103/01)
3. 12		Mr. K.S. Narendhiran Nayar, Nodal Officer, Tamil Nadu	18. 55		Mr. Mohan Anant Khirsagar, Dy.S.P., SDPO Deolgaoriraja, Distt. Buldhana, Maharashtra
4. 12A		Mr. K.S. Narendhiran Nayar (this affidavit is not on record)	19. 56		Mr. Jagdeo Mahadeo Akhare, SDPO, Washim Distt., Maharashtra (C.R.3080/01)
5. 27 ²		Mr. Ambadas Pate, Dy. Commissioner of Police, Zone-II, Nagpur, Presently at Mumbai	20. 57		Mr. Namdeo Mashnajirao Mittewad, Dy. S.P., Baramati, Distt. Pune (Rural), Maharashtra
6. 31		Mr. Vikram Karkud, Dy. S.P. Police Training School, Nanveej, Daund, Distt. Pune, Maharashtra	21. 58		Mr. Uttam Shankarao Pawar, Police Inspector, Ambejogai P.S., Distt. Beed, Maharashtra
7. 33		Mr. Yashwant Sambhaji Sabale, Police Sub-Inspector, Nashad P.S. Nashik (R), Maharashtra	22. 59		Mr. Madhukar Gopal Tupare, Police Inspector, Kurla P.S., Mumbai, Maharashtra
8. 34		Mr. S.S. Nave, Police Inspector, Bhosari P.S., Distt. Pune City, Maharashtra	23. 60		Mr. Dattatray Tukaram Naikodi, Police Inspector, Crime Branch, Mumbai City, Maharashtra
9. 46		Mr. Vinayak Saindane, Police Inspector, DSB Malegaon, Distt. Nashik, Maharashtra (C.R.3053/01)	24. 61 ³		Mr. Shivajirao, ACP, D-1 (East) Detection of Crime Branch, CID, Mumbai, Maharashtra
10. 47		Mr. Vinayak Saindane, Police Inspector, DSB Malegaon, Distt. Nashik, Maharashtra (C.R.3053/01)	25. 68		Mr. S. Khaja Moinuddin, Inspector of Police, Kalapathar P.S., Hyderabad City, Andhra Pradesh
11. 48		Mr. Vishnu Bhimashankar Mahinderkar, Police Inspector, P.S. Jail Road, Sholapur City, Maharashtra	26. 68A		Mr. S. Khaja Moinuddin, Inspector of Police, Kalapathar P.S., Hyderabad City, Andhra Pradesh (FIR No. 52/01)
12. 49		Mr. Madhukar Waghalkar, ASI, Old City P.S. Akola, Maharashtra	27. 68B		Mr. S. Khaja Moinuddin, Inspector of Police, Kalapathar P.S., Hyderabad City, Andhra Pradesh (FIR No. 54/01)
13. 50		Mr. Balu Gaigole, Police Inspector, Yeotmal City Police Station, Maharashtra	28. 68C		Mr. S. Khaja Moinuddin, Inspector of Police, Kalapathar P.S., Hyderabad City, Andhra Pradesh (FIR No. 55/01)
14. 51		Mr. Volas Namdeo Medhe, Dy. S.P. CID Crime, Computer Section Nasik Range, Nasik, Maharashtra	29. 68D		Mr. S. Khaja Moinuddin, Inspector of Police, Kalapathar P.S., Hyderabad City, Andhra Pradesh (FIR No. 51/01)
15. 52		Mr. Shantaram Namdeo Borse, Police Inspector, Nandurbar Control Room, Distt. Nandurbar, Maharashtra			

² Witness not produced for cross-examination. Affidavit/Evidence not considered. Files of IW 9a and IW 9b are tagged with the file of PW 12, & PW 13.

³ Witness not produced for cross-examination. Affidavit/Evidence not considered.

Sl. No./ Name of the Officer No. I.W.No.	Sl. File No./ Name of the Officer No. I.W.No.
30. 75 Mr. D. Anand Kumar, Inspector of Police, Chaderghat P.S., Hyderabad, Andhra Pradesh	47. 95 Mr. B.L. Meena, Police Inspector, P.S. Gandhwani, Distt. Dhar, Madhya Pradesh (F.I.R. 101/08)
31. 76 Mr. K. Hanumantha Rao, Police Inspector Patamata P.S., Vijayawada City, Krishna Distt, Andhra Pradesh.	48. 96 Mr. S.N. Solanki, ASI, P.S. Shahjahanabad, Distt. Bhopal, Madhya Pradesh
32. 77 Mr. Satish Kumar, Inspector of Police CID, A.P. Hyderabad	49. 98 Mr. Ajay Sangar, Inspector DGP Office, PHQ Bhopal, Madhya Pradesh (C.R184/08)
33. 78 Mr. R.K. Puri, SDOP Nepa Nagar, Distt. Burhanpur, Madhya Pradesh	50. 99 Mr. Ajay Pandey, Dy. S.P. Chief Security Officer, Vallab Bhawan, Bhopal, Madhya Pradesh
34. 79 Mr. Devesh Kumar Pathak, Inspector (Police Line), Jabalpur, Madhya Pradesh	51. 100 Mr. G.S. Chadar, SHO, P.S. Annapurna, Indore, Madhya Pradesh
35. 80 Mr. Navrattan Singh, City S. P., Kotwali Division, Ujjain, Madhya Pradesh	52. 101 Mr. Hari Shankar Tiwari, Inspector, SHO, P.S. Chachoda, Distt. Guna, Madhya Pradesh
36. 81 Mr. V. S. Arora, Dy. SP. AJK Neemuch, Distt. Neemuch, Madhya Pradesh	53. 102 Mr. Ritesh Sahu, SI/ATS, M.P. Unit, Jabalpur, Madhya Pradesh
37. 83 Mr. Umesh Sharma, Special Assistant of Agriculture Minister, Govt. of Madhya Pradesh, at Bhopal	54. 103 Mr. B.L. Meena, Police Inspector, P.S. Gandhwani, Distt. Dhar, Madhya Pradesh (F.I.R. 219/08)
38. 84 Mr. Jitendra Singh, Dy. S.P., Crime Branch, Indore, Madhya Pradesh	55. 105 Mr. Bharat Singh Chauhan, Dy. S.P., SDOP Shajapur, Madhya Pradesh
39. 85 Mr. Mohan Singh Yadav, Inspector SHO, P.S. MIG Colony, Indore, Madhya Pradesh	56. 107 Mr. N.K. Parihar, Nodal Officer, DSP (Crime) Jabalpur, Madhya Pradesh
40. 87 Mr. Sanjay Sahu, CSP, Omti, Jabalpur, Madhya Pradesh	57. 108 Mr. B.P. Chauhan, Sub-Inspector, P.S. Sondwa, Distt. Alirajpur, Madhya Pradesh
41. 88 Mr. Ajay Sangar, Inspector DGP Office, PHQ Bhopal, Madhya Pradesh (C.R192/08)	58. 109 Mr. U.P. Singh, Sub-Inspector, P.S. Madhav Nagar, Ujjain City, Madhya Pradesh
42. 90 Mr. C.S. Parihar, Town Inspector, P.S. Bhanpura, Distt. Mandsaur, Madhya Pradesh	59. 111 Mr. Ravishankar Deharia, Addl. S.P. Seoni, Madhya Pradesh
43. 91 Mr. J.D. Bhonsle, TI, P.S. Depalpur, Distt. Indore, Madhya Pradesh (F.I.R. 135/08)	60. 114 Mr. K.N. Vijayavargiya, 114, Kailash Park Colony, Behind Geeta Bhawan, Indore, Madhya Pradesh, (Public witness).
44. 92 Mr. J.D. Bhonsle, TI, P.S. Depalpur, Distt. Indore, Madhya Pradesh (F.I.R. 129/08)	
45. 93 Mr. Daulat Singh, Inspector, P.S. Mhow, Distt. Indore, Madhya Pradesh	
46. 94 Mr. Naveen Kumar Awasthi, (SHO) P.S. Kotwali, Inspector SPE Lokayukta Org. Bhopal, Madhya Pradesh	

[F.No. 14017/13/2010-NI-III]

ARUN KUMAR YADAV, Jt. Secy.